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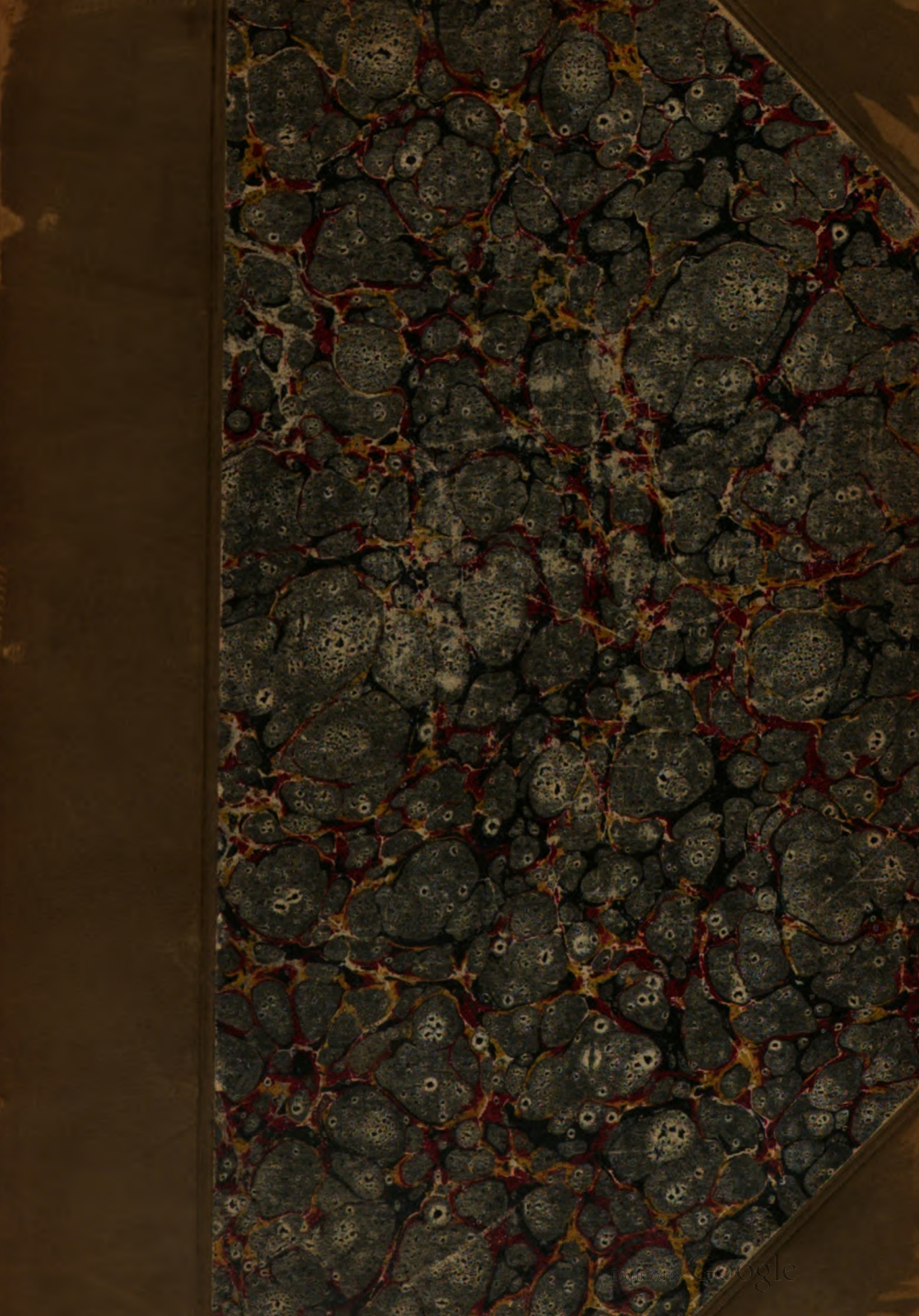
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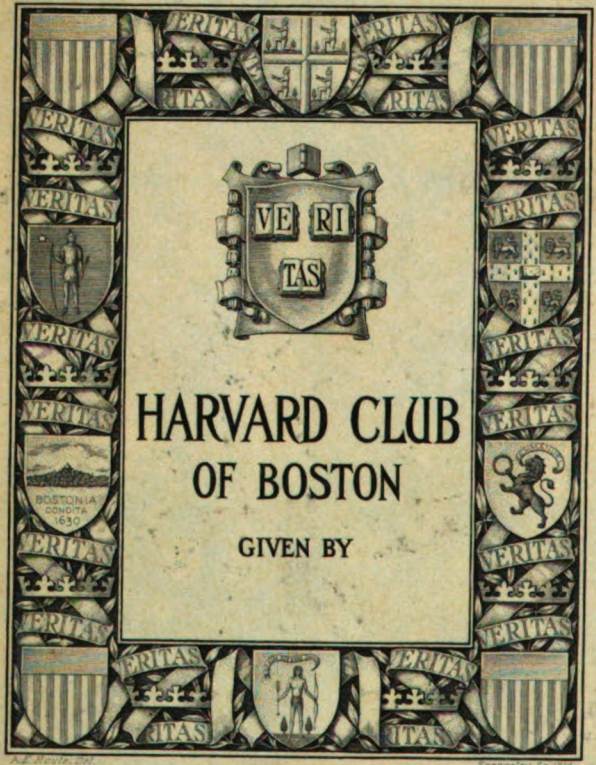

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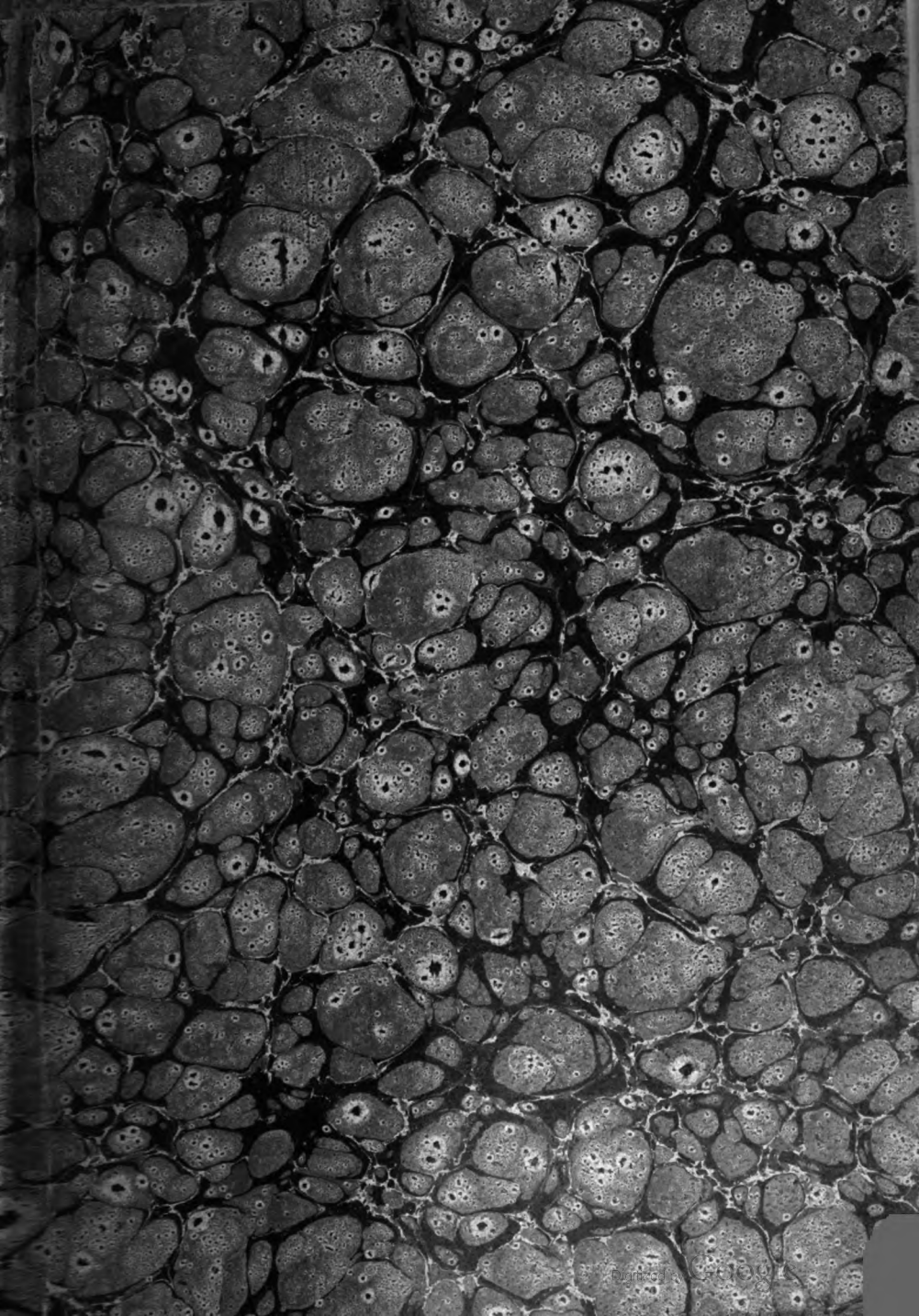

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THE

WORKS

OF

CHARLES SUMNER.

Veniet fortasse aliud tempus, dignius nostro, quo, debellatis odiis, veritas triumphabit. Hoc mecum opta, lector, et vale.

LEIBNITZ.

VOL. VII.

BOSTON:
LEE AND SHEPARD.
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RIGHTS OF SOVEREIGNTY AND RIGHTS OF WAR:

TWO SOURCES OF POWER AGAINST THE REBELLION.

SPEECH IN THE SENATE, ON HIS BILL FOR THE CONFISCATION OF PROPERTY AND THE LIBERATION OF SLAVES BELONGING TO REBELS, MAY 19, 1862.

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Wherefore he deserves to be punished, not only as an enemy, but also as a traitor, both to you and to us. And indeed treason is as much worse than war as it is harder to guard against what is secret than what is open, — and as much more hateful, as with enemies men make treaties again, and put faith in them, but with one who is discovered to be a traitor nobody ever enters into covenant, or trusts him for the future. — XENOPHON, *Hellenica*, Book II. ch. 3, § 29.

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EXCEPT the Tax Bill, no subject occupied so much attention during this session as what were known generally as "Confiscation Bills," all proposing, in different ways, the punishment of Rebels and the weakening of the Rebellion, by taking property and freeing slaves. In supporting these bills, Mr. Sumner did not disguise his special anxiety to assert the power of Congress over Slavery.

As early as January 15th, Mr. Trumbull reported from the Judiciary Committee a bill to confiscate the property and free the slaves of Rebels, which was considered from time to time and debated at length, many Senators speaking. Amendments were made, among which was one moved by Mr. Sumner, February 25th, requiring, that, whenever any person claimed another as slave, he should, before proceeding with his claim, prove loyalty.[1] Then came motions for reference of the pending bill and all associate propositions to a Select Committee. That of Mr. Clark prevailed. In a speech which will be found in the *Congressional Globe*,[2] sustaining the reference, Mr. Sumner said: —

"Such are the embarrassments in which we are involved, such is the maze into which we have been led by these various motions, that a committee is needed to hold the clew. Never was there more occasion for such a committee than now, when we have all these multifarious propositions to be considered, revised, collated, and brought into a constitutional unit, — or, if I may so say, changing the figure, passed through an alembic, to be fused into one bill on which we can all harmonize."

Mr. Clark reported from the Select Committee a bill "to suppress Insurrection and punish Treason and Rebellion," which, on the 16th of May, was taken up for consideration. Mr. Sumner was among those who thought the bill inadequate, and on the day it was taken up he introduced a substitute in ten sections, which was printed by order of the Senate. The title was, "For the Confiscation of Property and the Liberation of Slaves belonging to Rebels." The sections relating to Liberation were these.

"SEC. 6. *And be it further enacted*, That, if any person within any State or Territory of the United States shall, after the passage of this Act, wilfully

[1] See, *ante*, Vol. VI. p. 379.
[2] May 6, 1862, pp. 1957, 1958.

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engage in armed rebellion against the Government of the United States, or shall wilfully aid or abet such rebellion, or adhere to those engaged in such rebellion, giving them aid or comfort, every such person shall thereby forfeit all claim to the service or labor of any persons commonly known as slaves; and all such slaves are hereby declared free, and forever discharged from such servitude, anything in the laws of the United States, or of any State, to the contrary notwithstanding. And whenever thereafter any person claiming the labor or service of any such slave shall seek to enforce his claim, it shall be a sufficient defence thereto that the claimant was engaged in the said rebellion, or aided or abetted the same, contrary to the provisions of this Act.

"SEC. 7. *And be it further enacted*, That, whenever any person claiming to be entitled to the service or labor of any other person shall seek to enforce such claim, he shall, in the first instance, and before any order shall be made for the surrender of the person whose service or labor is claimed, establish not only his claim to such service or labor, but also that such claimant has not in any way aided, assisted, or countenanced the existing Rebellion against the Government of the United States. And no person engaged in the military or naval service of the United States shall, under any pretence whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or deliver up any such person to the claimant, on pain of being dismissed from the service."

May 19th, Mr. Sumner made the following speech, vindicating the powers of Congress.

A debate ensued, turning on the inadequacy of the pending bill, in which Mr. Sumner likened it to a glass of water with a bit of orange-peel, which, according to a character in one of Dickens's novels, by making believe very hard, would be a strong drink, and said: "At a moment when the life of the Republic is struck at, Senators would proceed by indictment in a criminal court." Mr. Wade said: "I do not know that we shall get anything; but if we only get this bill, we shall get next to nothing."

In the course of the debate, Mr. Davis departed from the main question to say that he understood the Senators from Massachusetts sympathized with the mob in Boston, and its resistance to the Fugitive Slave Act. He never knew that Mr. Wilson had appeared "to back the Marshal of the United States in the execution of that law." Then ensued a brief colloquy.

"MR. DAVIS. I never heard that he did, or that either of them did, perform or attempt to perform that high, patriotic duty.

"MR. SUMNER. I was in my seat here.

"MR. DAVIS. Did you not give your sympathy to those who resisted the law?

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"MR. SUMNER. My sympathy is always with every slave.

"MR. DAVIS. That is a frank acknowledgment. His sympathy is with every slave against the Constitution and the execution of the laws of his country! If that is not a sentiment of treason, I ask what is." [1]

Meanwhile the House of Representatives were considering the same subject, and on the 26th May passed a bill "to confiscate the property of Rebels for the payment of the expenses of the present Rebellion, and for other purposes," which, on motion of Mr. Clark, was taken up in the Senate June 23d, when he moved to substitute the pending Senate bill. The debate on the general question was resumed. June 27th, Mr. Sumner made another speech, which will be found in its place, according to date,[2] especially in reply to Mr. Browning, who had claimed the War Powers for the President rather than for Congress.

June 28th, the substitute moved by Mr. Clark was agreed to, Yeas 19, Nays 17, and the bill as amended was then passed, Yeas 28, Nays 13.

July 3d, the House non-concurred in the Senate amendment. A Conference Committee reported in substance the Senate amendment, which was accepted in the Senate, Yeas 28, Nays 13, and in the House, Yeas 82, Nays 42. July 17th, the bill was signed by the President.

The sections of this bill, as it passed, relating to liberation, were these.

"SEC. 9. *And be it further enacted*, That all slaves of persons who shall hereafter be engaged in rebellion against the Government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army, and all slaves captured from such persons, or deserted by them, and coming under the control of the Government of the United States, and all slaves of such persons found on [or] being within any place occupied by Rebel forces, and afterwards occupied by the forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.

"SEC. 10. *And be it further enacted*, That no slave escaping into any State, Territory, or the District of Columbia, from any other State, shall be delivered up, or in any way impeded or hindered of his liberty, except for crime, or some offence against the laws, unless the person claiming said fugitive shall first make oath that the person to whom the labor or service of such fugitive is alleged to be due is his lawful owner, and has not borne arms against the United States in the present Rebellion, nor in any way

[1] Congressional Globe, 37th Cong. 2d Sess., May 20, 1862, p. 2223.

[2] *Post*, p. 128.

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given aid and comfort thereto; and no person engaged in the military or naval service of the United States shall, under any pretence whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or surrender up any such person to the claimant, on pain of being dismissed from the service."[1]

This speech in the Washington pamphlet was entitled "Indemnity for the Past and Security for the Future," which points directly at its object. An edition was printed in New York by the Young Men's Republican Union, with the title, "Rights of Sovereignty and Rights of War, Two Sources of Power against the Rebellion," which describes the way in which this object might be accomplished.

It was noticed at the time as removing difficulties which perplexed many with regard to the powers of Congress.

In Paris, the *Journal des Débats*[2] referred to it as explaining the confiscation proposed in the United States, and quoted passages especially in reply to the *Constitutionnel*, which had attacked the measure.

A few opinions are given, merely to illustrate the tone of comment.

Hon. John Jay, afterwards our Minister at Vienna, who sympathized promptly with all that was done to crush the Rebellion, wrote from New York: —

"Your Confiscation speech is an admirable exposition of the subject, and will go far to remove any lingering doubts in the public mind in regard to the constitutionality and necessity of the measure."

Then again he wrote: —

"I have re-read, with thorough satisfaction, your speech on Confiscation and Emancipation in the pamphlet you were good enough to send me. It is admirable in its tone, arrangement, and completeness, and the arguments and illustrations are overwhelming and unanswerable. The necessity of Emancipation is fast forcing itself upon our people by the stern logic of facts, but your speech will remove any lingering doubts."

Hon. Amos P. Granger, former Representative in Congress, and a stern patriot, wrote from Syracuse, New York: —

"Your remarks of the 19th, as reported in the *Tribune* day before yesterday, are read in this vicinity with a great deal of pleasure and approbation. They are replete with prudence, skill, and wisdom. Such sentiments are rarely heard in Washington. It would seem that they would be decisive."

[1] Statutes at Large, Vol. XII. p. 591.
[2] 12 Juin, 1862.

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Hon. William L. Marshall, an able Judge of Maryland, wrote from Baltimore : —

"You have exhausted the subject, it seems to me, so far as it involves legal questions. I have been greatly pleased and much interested by your argument."

L. D. Stickney, of Florida, wrote from Washington : —

"I have read your speech on the confiscation of the property of rebels with the liveliest interest and with entire approbation. Long a citizen of the South, I have nevertheless been a steadfast Republican of the school of Jefferson and of J. Quincy Adams, — a Republican to elevate men to the proper status of freemen, not to degrade them to slavery. While the unthinking and those of violent prejudices call you fanatical, no man properly qualified to judge of men and events can survey your parliamentary history without acknowledging your claim to the highest plane of statesmanship. I reverence Sir James Mackintosh as the brightest example of great men whom the world will not willingly let die. Tried by no other standard than your speeches in the Thirty-Seventh Congress alone, you will stand unchallenged by the enlightened judgment of mankind, his co-rival in that fame which makes his name cherished by scholars everywhere, and by all men of good report."

While expressing sympathy with this speech, many at this time, like the last writer, referred to the series of efforts by Mr. Sumner during this session. Among these was Hon. Samuel E. Sewall, of Boston, the able lawyer and tried Abolitionist, who repeated the kindly appreciation which he had expressed on other occasions.

"Your course during the present session has not only delighted your friends, but I think has given great satisfaction to the mass of your constituents, as well as to all throughout the country whose opinions are of any value.

"Any man might think his life well spent, who, in its whole course, had said and done no more in the cause of freedom and justice than you have in the six months past."

Hon. Charles W. Upham, the author, and former Representative in Congress, wrote from Salem : —

"You have nobly presented and thoroughly exhausted all the subjects you have treated. I rejoice in your success, and cordially indorse your sentiments. May you live to witness the progressive triumphs of the great cause to which you are devoted!"

Lewis Tappan, often quoted already, wrote from New York : —

"You have done a great work in the Senate during the last session. I

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admire your consistency. Every utterance has been instinct with liberty and loyalty. . . . . Thanking you again for the speech, and for your other speeches, and thanking God for the brilliancy of your entire Senatorial career . . . ."

Hon. Asaph Churchill, lawyer and fellow-student, expressed his sympathy, and gave a reminiscence, in a letter from Boston.

"Allow me to congratulate you upon the grand success of our country's movement, and no less upon your own career, which has been crowned with such splendid success, during the past season, in the new, important, and delicate questions which you have been called upon to speak and act upon. Certainly your highest ambition ought to be satisfied with that which insures to you your place in the immortality of history; and you have had the most abundant opportunity for accomplishing upon the grandest scale that aspiration which I so well remember you gave utterance to at our Law School, when, boy-like, we were all telling what we most ardently sought to do or to be, that you 'wished to do that which would do the most good to mankind.'"

Wendell Phillips, after his return from a lecture-tour, wrote: —

"Be of good courage. We all say amen to you. And your diocese, *I* can testify, extends to the Mississippi."

Alfred E. Giles, lawyer, wrote from Boston: —

"During your Congressional career, I have so uniformly found my views and feelings on public affairs in accordance with those of your speeches, that I now feel myself obliged, for once at least (for I shall not often trouble you), to express my gratitude, and give a word of good cheer to you, who, amid so many discouragements, and under so much obloquy as has been attempted to be thrown upon you, have ever so faithfully and manfully stood up for the oppressed and for liberal principles.

"It appears to me, on reading your speeches, that I find my own views and principles announced, stated, and clothed with a richness and beauty of style and illustration that I admire, but cannot emulate.

"Again, I am much pleased that you always deal fairly with your opponents, not using misrepresentation and *ad captandum* argument, but drawing your weapons from the armory of truth and right."

Professor Ordronaux, of Columbia College, New York, wrote: —

"Last year, while in England, I had the honor of meeting many gentlemen of your acquaintance, and, amid the many bitter things I was compelled to listen to, it was a source of constant satisfaction and pride to hear them acknowledge the great confidence they reposed in you and the earnest wish they expressed for the success of that *novus ordo seclorum* in the Senate, for which we are so much indebted to you. Reading over for the third time

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your famous Kansas speech, of May, 1856,[1] this morning, I was struck with the almost prophetic character of its language. The crime against Nature has indeed culminated. It struck you down, and then went dancing like a maniac, all the while approaching that bottomless abyss into which it is now descending. Can you doubt that Nemesis still wields her sword and flaming torch?"

These expressions of sympathy and good-will, overflowing from opposite quarters, are a proper prelude to other utterances, widely different in tone, aroused against Mr. Sumner by the very persistency of his course. Appearing in their proper place, these will be better comprehended from knowing already the other side.

[1] The Crime against Kansas, May 19 and 20, 1856: *ante*, Vol. IV. p. 125.

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SPEECH.

MR. PRESIDENT, — If I can simplify this discussion, I shall feel that I have done something towards establishing the truth. The chief difficulty springs from confusion with regard to different sources of power. This I shall try to remove.

There is a saying, often repeated by statesmen and often recorded by publicists, which embodies the direct object of the war we are now unhappily compelled to wage, — an object sometimes avowed in European wars, and more than once made a watchword in our own country: "Indemnity for the past, and Security for the future." Such should be our comprehensive aim, — nor more, nor less. Without indemnity for the past, this war will have been waged at our cost; without security for the future, this war will have been waged in vain, treasure and blood will have been lavished for nothing. But indemnity and security are both means to an end, and that end is the National Unity under the Constitution of the United States. It is not enough, if we preserve the Constitution at the expense of the National Unity. Nor is it enough, if we enforce the National Unity at the expense of the Constitution. Both must be maintained. Both will be maintained, if we do not fail to take counsel of that prudent cour-

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age which is never so much needed as at a moment like the present.

Two things we seek as means to an end: Indemnity for the past, and Security for the future.

Two things we seek as the end itself: National Unity, under the Constitution of the United States.

In these objects all must concur. But how shall they be best accomplished?

The Constitution and International Law are each involved in this discussion. Even if the question itself were minute, it would be important from such relations. But it concerns vast masses of property, and, what is more than property, it concerns the liberty of men, while it opens for decision the means to be employed in bringing this great war to a close. In every aspect the question is transcendent; nor is it easy to pass upon it without the various lights of *jurisprudence*, of *history*, and of *policy*.

Sometimes it is called a constitutional question exclusively. This is a mistake. In every Government bound by written Constitution nothing is done except in conformity with the Constitution. But in the present debate there need be no difficulty or doubt under the Constitution. Its provisions are plain and explicit, so that they need only to be recited. The Senator from Pennsylvania [Mr. COWAN] and the Senator from Vermont [Mr. COLLAMER] have stated them strongly; but I complain less of their statement than of its application. Of course, any proposition really inconsistent with these provisions must be abandoned. But if, on the other hand, it be consistent, then is the way open to its consideration in the lights of history and policy.

If there be any difficulty now, it is not from the ques-

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tion, but simply from the facts, — as often in judicial proceedings it is less embarrassing to determine the law than the facts. If things are seen as they really are and not as Senators fancy or desire, if the facts are admitted in their natural character, then must the constitutional power of the Government be admitted also, for this power comes into being on the occurrence of certain facts. Only by denying the facts can the power itself be drawn in question. But not even the Senator from Pennsylvania or the Senator from Vermont denies the facts.

The facts are simple and obvious. They are all expressed or embodied in the double idea of Rebellion and War. Both of these are facts patent to common observation and common sense. It would be an insult to the understanding to say that at the present moment there is no Rebellion or that there is no War. Whatever the doubts of Senators, or their fine-spun constitutional theories, nobody questions that we are in the midst of *de facto* Rebellion and in the midst of *de facto* War. We are in the midst of each and of both. It is not enough to say that there is Rebellion; nor is it enough to say that there is War. The whole truth is not told in either alternative. Our case is double, and you may call it Rebellion or War, as you please, or you may call it both. It is Rebellion swollen to all the proportions of war, and it is War deriving its life from rebellion. It is not less Rebellion because of its present full-blown grandeur, nor is it less War because of the traitorous source whence it draws its life.

The Rebellion is manifest, — is it not? An extensive territory, once occupied by Governments rejoicing

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in allegiance to the Union, and sharing largely in its counsels, has undertaken to overthrow the National Constitution within its borders. Its Senators and Representatives have withdrawn from Congress. The old State Governments, solemnly bound by the oaths of their functionaries to support the National Constitution, have vanished; and in their place appear pretended Governments, which, adopting the further pretension of a Confederacy, have proceeded to issue letters of marque and to levy war against the United States. So far has displacement of the National Government prevailed, that at this moment, throughout this whole territory, there are no functionaries acting under the United States, but all are pretending to act under the newly established Usurpation. Instead of the oath to support the Constitution of the United States, required of all officials by the Constitution, another oath is substituted, to support the Constitution of the Confederacy; and thus the Rebellion assumes a completeness of organization under the most solemn sanctions. In point of fact, throughout this territory the National Government is ousted, while the old State Governments have ceased to exist, lifeless now from Rebel hands. Call it suicide, if you will, or suspended animation, or abeyance, — they have practically ceased to exist. Such is the plain and palpable fact. If all this is not rebellion, complete in triumphant treason, then is rebellion nothing but a name.

But the War is not less manifest. Assuming all the functions of an independent government, the Confederacy has undertaken to declare war against the United States. In support of this declaration it has raised armies, organized a navy, issued letters of marque, bor-

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rowed money, imposed taxes, and otherwise done all that it could in waging war. Its armies are among the largest ever marshalled by a single people, and at different places throughout a wide-spread territory they have encountered the armies of the United States. Battles are fought with the varying vicissitudes of war. Sieges are laid. Fortresses and cities are captured. On the sea, ships bearing the commission of the Rebellion, sometimes as privateers and sometimes as ships of the navy, seize, sink, or burn merchant vessels of the United States; and only lately an iron-clad steamer, with the flag of the Rebellion, destroyed two frigates of the United States. On each side prisoners are made, who are treated as prisoners of war, and as such exchanged. Flags of truce pass from camp to camp, and almost daily during the winter this white flag has afforded its belligerent protection to communications between Norfolk and Fortress Monroe, while the whole Rebel coast is by proclamation of the President declared in a state of blockade, and ships of foreign countries, as well as of our own, are condemned by courts in Washington, Philadelphia, New York, and Boston, as prize of war. Thus do all things attest the existence of war, which is manifest now in the blockade, upheld by judicial tribunals, and now in the bugle, which after night sounds truce, indubitably as in mighty armies face to face on the battle-field. It is war in all its criminal eminence, challenging all the pains and penalties of war, enlisting all its terrible prerogatives, and awaking all its dormant thunder.

Further effort is needless to show that we are in the midst of a Rebellion and in the midst of a War, — or, in yet other words, that unquestionable war is now waged

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to put down unquestionable rebellion. But a single illustration out of many in history will exhibit this double character in unmistakable relief. The disturbances which convulsed England in the middle of the seventeenth century were occasioned by the resistance of Parliament to the arbitrary power of the Crown. This resistance, prolonged for years and maintained by force, triumphed at last in the execution of King Charles and the elevation of Oliver Cromwell. The historian whose classical work was for a long time the chief authority relative to this event styles it "The Rebellion," and under this name it passed into the memory of men. But it was none the less war, with all the incidents of war. The fields of Naseby, Marston Moor, Dunbar, and Worcester, where Cavaliers and Puritans met in bloody shock, attest that it was war. Clarendon called it Rebellion, and the title of one of his works makes it "The Grand Rebellion," — how small by the side of ours! But a greater than Clarendon — John Milton — called it War, when, in unsurpassed verses, after commemorating the victories of Cromwell, he uses words so often quoted without knowing their original application: —

> "Yet much remains
> To conquer still: Peace hath her victories
> No less renowned than War." [1]

The death of Cromwell was followed by the restoration of King Charles the Second; but the royal fugitive from the field of Worcester, where Cromwell triumphed in war, did not fail to put forth the full prerogatives of sovereignty in the suppression of rebellion; and all who sat in judgment on the king, his father, were saved from the fearful penalties of treason only by exile. Hugh

[1] Sonnet XVI. 9–11: To the Lord General Cromwell.

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Peters, the Puritan preacher, and Harry Vane, the Puritan senator, were executed as traitors for the part they performed in what was at once rebellion and war, while the body of the great commander who defeated his king in battle, and then sat upon his throne, was hung in chains, as a warning against treason.

Other instances might be given to illustrate the double character of present events. But enough is done. My simple object is to exhibit this important point in such light that it will be at once recognized. And I present the Rebellion and the War as obvious *facts*. Let them be seen in their true character, and it is easy to apply the law. Because Senators see the facts only imperfectly, they hesitate with regard to the powers we are to employ, — or perhaps it is because they insist upon seeing the fact of Rebellion exclusively, and not the fact of War. Let them open their eyes, and they must see both. If I seem to dwell on this point, it is because of its practical importance in the present debate. For myself, I assume it as an undeniable postulate.

The persons arrayed for the overthrow of the Government of the United States are unquestionably *criminals*, subject to all the penalties of rebellion, which is of course treason under the Constitution of the United States.

The same persons arrayed in war against the Government of the United States are unquestionably *enemies*, exposed to all the incidents of war, with its penalties, seizures, contributions, confiscations, captures, and prizes.

They are *criminals*, because they set themselves traitorously against the Government of their country.

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They are *enemies*, because their combination assumes the front and proportions of war.

It is idle to say that they are not criminals. It is idle to say that they are not enemies. They are both, and they are either; and it is for the Government of the United States to proceed against them in either character, according to controlling considerations of policy. This right is so obvious, on grounds of reason, that it seems superfluous to sustain it by authority. But since its recognition is essential to the complete comprehension of our present position, I shall not hesitate to illustrate it by judicial decisions, and also by an earlier voice.

A judgment of the Supreme Court of the United States cannot bind the Senate on this question; but it is an important guide, to which we all bow with respect. In the best days of this eminent tribunal, when Marshall was Chief Justice, in a case arising out of the efforts of France to suppress insurrection in the colony of San Domingo, it was affirmed by the Court that in such a case there were two distinct sources of power open to exercise by a government, — one found in the rights of a sovereign, the other in the rights of a belligerent, or, in other words, one under Municipal Law, and the other under International Law, — and the exercise of one did not prevent the exercise of the other. Belligerent rights, it was admitted, might be superadded to the rights of sovereignty. Here are the actual words of Chief-Justice Marshall: —

"It is not intended to say that belligerent rights may not be superadded to those of sovereignty. But admitting a sovereign, who is endeavoring to reduce his revolted subjects to obedience, to possess both sovereign and belligerent

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rights, and to be capable of acting in either character, the manner in which he acts must determine the character of the act. If as a legislator he publishes a law ordaining punishments for certain offences, which law is to be applied by courts, the nature of the law and of the proceedings under it will decide whether it is an exercise of belligerent rights or exclusively of his sovereign power." [1]

Here are the words of another eminent judge, Mr. Justice Johnson, in the same case:—

"But there existed a war between the parent state and her colony. It was not only a fact of the most universal notoriety, but officially notified in the gazettes of the United States. . . . . Here, then, was notice of the existence of war, and an assertion of the rights consequent upon it. The object of the measure was . . . . solely the reduction of an enemy. *It was, therefore, not merely municipal, but belligerent, in its nature and object.*" [2]

Although the conclusion of the Court in this case was afterwards reversed, yet nothing occurred to modify the judgment on the principles now in question; so that the case remains authority for double proceedings, municipal and belligerent.

On a similar state of facts, arising from the efforts of France to suppress the insurrection in San Domingo, the Supreme Court of Pennsylvania asserted the same principle; and here we find the eminent Chief-Justice Tilghman — one of the best authorities of the American bench — giving to it the weight of his enlightened judgment. These are his words:—

"We are not at liberty to consider the island in any other

[1] Rose v. Himely, 4 Cranch, S. C. R., pp. 272, 273.
[2] Ibid., pp. 288, 289.

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light than as part of the dominions of the French Republic. *But supposing it to be so, the Republic is possessed of belligerent rights.* . . . .

"Although the French Government, from motives of policy, might not choose to make mention of war, yet it does not follow that it might not avail itself of all rights to which by the Law of Nations it was entitled in the existing circumstances. . . . . This was the course pursued by Great Britain in the Revolutionary War with the United States. . . . . Considering the words of the *arrêté*, and the circumstances under which it was made, it ought not to be understood simply as a municipal regulation, but a municipal regulation connected with *a state of war* with revolted subjects."[1]

The principle embodied in these cases is accurately stated by a recent text-writer as follows.

"A sovereign nation, engaged in the duty of suppressing an insurrection of its citizens, may, with entire consistency, act in the twofold capacity of sovereign and belligerent, according to the several measures resorted to for the accomplishment of its purpose. By inflicting, through its agent, the judiciary, the penalty which the law affixes to the capital crimes of treason and piracy, ... it acts in its capacity as a sovereign, and its courts are but enforcing its municipal regulations. By instituting a blockade of the ports of its rebellious subjects, ... the nation is exercising the right of a belligerent, and its courts, in their adjudications upon the captures made in the enforcement of this measure, are organized as Courts of Prize, governed by and administering the Law of Nations."[2]

The same principle has received most authentic decla-

[1] Cheriot *v.* Fousat, 3 Binney, R., pp. 252, 258.

[2] Upton, The Law of Nations affecting Commerce during War, pp. 211, 212.

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ration in the recent judgment of an able magistrate in a case of Prize for a violation of the blockade. I refer to the case of the *Amy Warwick*, tried in Boston, where Judge Sprague, of the District Court, expressed himself as follows.

"The United States, as a nation, have full and complete belligerent rights, which are in no degree impaired by the fact that their enemies owe allegiance, and have superadded the guilt of treason to that of unjust war." [1]

Among all the judges called to consider judicially the character of this Rebellion, I know of none whose opinion is entitled to more consideration. Long experience has increased his original aptitude for such questions, and made him an authority.

There is an earlier voice, which, even if all judicial tribunals had been silent, would be decisive. I refer to Hugo Grotius, who, by his work "*De Jure Belli ac Pacis*," became the lawgiver of nations. Original in conception, vast in plan, various in learning, and humane in sentiment, this effort created the science of International Law, which, since that early day, has been softened and refined, without essential change in the principles then enunciated. His master mind anticipated the true distinction, when, in definition of War, he wrote as follows.

"The first and most necessary partition of war is this: that war is *private*, *public*, or *mixed*. Public war is that which is carried on under the authority of him who has jurisdiction; private, that which is otherwise; *mixed, that which is public on one side and private on the other*." [2]

[1] Law Reporter, Vol. XXIV. p. 845, April, 1862.
[2] Lib. I. cap. 3, § 1.

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In these few words of this great authority is found the very discrimination which enters into the present discussion. The war in which we are now engaged is not precisely "public," because on one side there is no Government; nor is it "private," because on one side there is a Government; but it is "mixed," — that is, public on one side and private on the other. On the side of the United States, it is under authority of the Government, and therefore "public"; on the other side, it is without the sanction of any recognized Government, and therefore "private." In other words, the Government of the United States may claim for itself all belligerent rights, while it refuses them to the other side. And Grotius, in his reasoning, sustains his definition by showing that war becomes the essential agency, where public justice ends, — that it is the justifiable mode of dealing with those who are not kept in order by judicial proceedings, — and that, as a natural consequence, where war prevails, the Municipal Law is silent. And here, with that largess of quotation which is one of his peculiarities, he adduces the weighty words of Demosthenes: "Against enemies, who cannot be coerced by our laws, it is proper and necessary to maintain armies, to send out fleets, and to pay taxes; but against our own citizens, a decree, an indictment, the state vessel are sufficient."[1] But when citizens array themselves in multitudes, they come within the declared condition of enemies. There is so much intrinsic reason in this distinction that I am ashamed to take time upon it. And yet it has been constantly neglected in this debate. Let it be accepted, and the constitu-

[1] Oratio de Chersoneso, p. 97: Grotius, De Jure Belli ac Pacis, Prolegom. § 25.

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tional scruples which play such a part will be out of place.

Senators seem to feel the importance of being able to treat the Rebels as "alien enemies," on account of penalties which would then attach. The Senator from Kentucky [Mr. DAVIS], in his bill, proposes to declare them so, and the Senator from Wisconsin [Mr. DOOLITTLE] has made a similar proposition with regard to a particular class. But all this is superfluous. Rebels in arms are "enemies," exposed to all the penalties of war, as much as if they were alien enemies. No legislation is required to make them so. They are so in fact. It only remains that they should be treated so, or, according to the Declaration of Independence, that we "hold them, as we hold the rest of mankind, *enemies in war*, in peace friends."

Mark now the stages of the discussion. We have seen, first, that, in point of *fact*, we are in the midst of rebellion and in the midst of a war, — and, secondly, that, in point of *law*, we are at liberty to act under powers incident to either or both of these conditions, treat the people engaged against us as criminals, or as enemies, or, if we please, as both. Pardon me, if I repeat these propositions; but it is essential that they should not be forgotten.

Therefore, Sir, in determining our course, we may banish all question of power. The power is ample and indubitable, being regulated in the one case by the Constitution, and in the other case by the Rights of War. Treating them as criminals, then are we under the restraints of the Constitution; treating them as enemies, we have all the latitude sanctioned by the

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Rights of War; treating them as both, then may we combine our penalties from the double source. What is done against them merely as *criminals* will naturally be in conformity with the Constitution; but what is done against them as *enemies* will have no limitation except the Rights of War.

The difference between these two systems, represented by two opposite propositions now pending, may be seen in the motive which is the starting-point of each. Treating those arrayed in arms against us as criminals, we assume sovereignty, and seek to punish for violation of existing law. Treating them as enemies, we assume no sovereignty, but simply employ the means known to war in overcoming an enemy, and in obtaining security against him. In the one case our cause is founded in Municipal Law under the Constitution, and in the other case in the Rights of War under International Law. In the one case our object is simply punishment; in the other case it is assured victory.

Having determined the existence of these two sources of power, we are next led to consider the character and extent of each under the National Government: first, *Rights against Criminals*, founded on sovereignty, with their limitations under the Constitution; and, secondly, *Rights against Enemies*, founded on war, which are absolutely without constitutional limitation. Having passed these in review, the way will then be open to consider which class of rights Congress shall exercise.

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I.

I BEGIN, of course, with *Rights against Criminals*, founded on sovereignty, with their limitations under the Constitution.

Rebellion is in itself the crime of treason, which is usually called the greatest crime known to the law, containing all other crimes, as the greater contains the less. But neither the magnitude of the crime nor the detestation it inspires can properly move us from duty to the Constitution. Howsoever important it may be to punish rebels, this must not be done at the expense of the Constitution. On that point I agree with the Senator from Pennsylvania [Mr. COWAN], and the Senator from Vermont [Mr. COLLAMER]; nor will I yield to either in determination to uphold the Constitution, which is the shield of the citizen. Show me that any proposition is without support in the Constitution, or that it offends against any constitutional safeguard, and it cannot receive my vote. Sir, I shall not allow Senators to be more careful on this head than myself. They shall not have a monopoly of this proper caution.

In proceedings against criminals there are provisions or principles of the Constitution which cannot be disregarded. I will enumerate them, and endeavor to explain their true character.

1. Congress, it is said, has no power under the Constitution over Slavery in the States. This popular principle of Constitutional Law, which is without foundation in the positive text of the Constitution, is adduced against all propositions to free the slaves of Rebels. But this is an obvious misapplication of the alleged principle, which simply means that Congress

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has no direct power over Slavery in the States, so as to abolish or limit it. For no careful person, whose opinion is of any value, ever attributed to the pretended property in slaves an immunity from forfeiture or confiscation not accorded to other property; and this is a complete answer to the argument on this head. Even in prohibiting Slavery, as in the Jeffersonian ordinance, there is a declared exception of the penalty of crime; and so in upholding Slavery in the States, there must be a tacit, but unquestionable, exception of this penalty.

2. There must be no *ex post facto* law; which means that there can be no law against crime retrospective in its effect. This is clear.

3. There must be no bill of attainder; which means that there can be no special legislation, where Congress, undertaking the double function of legislature and judge, shall inflict the punishment of death without conviction by due process of law. And there is authority for assuming that this prohibition includes a bill of pains and penalties, which is a milder form of legislative attainder, where the punishment inflicted is less than death.[1] And surely no constitutional principle is more worthy of recognition.

4. No person shall be deprived of life, liberty, or property, without due process of law; which means, without presentment, or other judicial proceeding. This provision, borrowed from Magna Charta, constitutes a safeguard for all: nor can it be invoked by the criminal more than by the slave; for in our Constitution it is applicable to every "person," without distinction of condition or color. But the criminal is entitled to its protection.

[1] Story, Commentaries on the Constitution, Vol. II. § 1844.

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5. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law. This is the sixth amendment to the Constitution, and is not to be lost sight of now. The accused, whoever he may be, though his guilt be open as noonday, can be reached *criminally* only in the way described. When we consider the deep and wide-spread prejudices which must exist throughout the whole Rebel territory, it is difficult to suppose that any jury could be found within the State and District where the treason was committed who would unite in the necessary verdict of Guilty. For myself, I do not expect it; and I renounce the idea of justice in this way. Jefferson Davis himself, whose crime has culminated in Virginia, could not be convicted by a jury of that State. But it is the duty of the statesman to consider how justice, impossible in one way, may be made possible in another way.

6. No attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted. Perhaps no provision of the Constitution, supposed pertinent to the present debate, has been more considered; nor is there any with regard to which there is greater difference of opinion. Learned lawyers in this body insist broadly that it forbids forfeiture of real estate, although not of personal, as a penalty of treason; while others insist that all the real as well as personal estate belonging to the offender may be forfeited. The words of the Constitution are technical, so as to require interpretation; and as they are derived from the Common Law, we must look to this law for

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their meaning. By "attainder of treason" is meant *judgment of death* for treason, — that is, the judgment of court on conviction of treason. "Upon judgment of death for treason or felony," says Blackstone, "a man shall be said to be attainted." [1] Such judgment, which is, of course, a criminal proceeding, cannot, under our Constitution, work corruption of blood; which means that it cannot create obstruction or incapacity in the blood to prevent an innocent heir from tracing title through the criminal, as was cruelly done by the Common Law.

Nor shall such attainder work "forfeiture except during the life of the person attainted." If there be any question, it arises under these words, which, it will be observed, are peculiarly technical. As the term "attainder" is confined to "judgment of death," this prohibition is limited precisely to where that judgment is awarded; so that, if the person is not adjudged to death, there is nothing in the Constitution to forbid absolute forfeiture. This conclusion is irresistible. If accepted, it disposes of the objection in all cases where there is no judgment of death.

Even where the traitor is adjudged to death, there is good reason to doubt if his estate in fee-simple, which is absolutely his own, and alienable at his mere pleasure, may not be forfeited. It is admitted by Senators that the words of the Constitution do not forbid the forfeiture of the personal estate, which in the present days of commerce is usually much larger than the real estate, although to an unprofessional mind these words are as applicable to one as to the other; so that a person attainted of treason would forfeit all his personal estate, of

[1] Commentaries, Vol. IV. p. 381.

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every name and nature, no matter what its amount, even if he did not forfeit his real estate. But since an estate in fee-simple belongs absolutely to the owner, and is in all respects subject to his disposition, there seems no reason for its exemption which is not equally applicable to personal property. The claim of the family is as strong in one case as in the other. And if we take counsel of analogy, we find ourselves led in the same direction. It is difficult to say, that, in a case of treason, there can be any limitation to the amount of fine imposed; so that in sweeping extent it may take from the criminal all his estate, real and personal. And, secondly, it is very clear that the prohibition in the Constitution, whatever it be, is confined to "attainder of treason," and not, therefore, applicable to a judgment for felony, which at the Common Law worked forfeiture of all estate, real and personal; so that under the Constitution such forfeiture for felony can be now maintained. But assuming the Constitution applicable to treason where there is no judgment of death, it is only reasonable to suppose that this prohibition is applicable *exclusively to that posthumous forfeiture depending upon corruption of blood;* and here the rule is sustained by intrinsic justice. But all present estate, real as well as personal, actually belonging to the traitor, is forfeited.

Not doubting the intrinsic justice of this rule, I am sustained by the authority of Mr. Hallam, who, in a note to his invaluable History of Literature, after declaring, that, according to the principle of Grotius, the English law of forfeiture in high treason is just, being part of the direct punishment of the guilty, but that of attainder or corruption of blood is unjust, being an infliction on the innocent alone, stops to say:—

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"I incline to concur in this distinction, and think it at least plausible, though it was seldom or never taken in the discussions concerning those two laws. Confiscation is no more unjust towards the posterity of an offender than fine, from which, of course, it only differs in degree." [1]

An opinion from such an authority is entitled to much weight in determining the proper signification of doubtful words.

This interpretation is helped by another suggestion, which supposes the comma in the text of the Constitution misplaced, and that, instead of being after "corruption of blood," it should be after "forfeiture," separating it from the words "except during the life of the person attainted," and making them refer to the time when the attainder takes place, rather than to the length of time for which the estate is forfeited. Thus does this much debated clause simply operate to forbid forfeiture when not pronounced "during the life of the person attainted." In other words, the forfeiture cannot be pronounced against a dead man, or the children of a dead man, and this is all.

Amidst the confusion in which this clause is involved, you cannot expect that it will be a strong restraint upon any exercise of power under the Constitution which otherwise seems rational and just. But, whatever its signification, it has no bearing on our rights against enemies. Bear this in mind. Criminals only, and not enemies, can take advantage of it.

Such, Mr. President, are the provisions or principles of Constitutional Law controlling us in the exercise of

[1] Introduction to the Literature of Europe, 3d edit., (London, 1847,) Vol. II. p. 568, note.

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rights against criminals. If any bill or proposition, penal in character, having for its object simply punishment, and ancillary to the administration of justice, violates any of these safeguards, it is not constitutional. Therefore do I admit that the bill of the Committee, and every other bill now before the Senate, so far as they assume to exercise the Rights of Sovereignty in contradistinction to the Rights of War, must be in conformity with these provisions or principles.

But the Senator from Vermont [Mr. COLLAMER], in his ingenious speech, to which we all listened with so much interest, was truly festive in allusion to certain proceedings much discussed in this debate. The Senator did not like proceedings *in rem*, although I do not know that he positively objected to them as unconstitutional. It is difficult to imagine any such objection. Assuming that criminals cannot be reached to be punished *personally*, or that they have fled, the Senator from Illinois [Mr. TRUMBULL], and also the Senator from New York [Mr. HARRIS], propose to reach them through their property, — or, adopting technical language, instead of proceedings *in personam*, which must fail from want of jurisdiction, propose proceedings *in rem*. Such proceedings may not be of familiar resort, since, happily, an occasion like the present has never before occurred among us; but they are strictly in conformity with established precedents, and also with the principles by which these precedents are sustained.

Nobody can forget that smuggled goods are liable to confiscation by proceedings *in rem*. This is a familiar instance. The calendar of our District Courts is crowded with these cases, where the United States are

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plaintiff, and some inanimate thing, an article of property, is defendant. Such, also, are proceedings against a ship engaged in the slave-trade. Of course, by principles of the Common Law, a conviction is necessary to divest the offender's title; but this rule is never applied to forfeitures created by statute. It is clear that the same sovereignty which creates the forfeiture may determine the proceedings by which it shall be ascertained. If, therefore, it be constitutional to direct the forfeiture of rebel property, it is constitutional to authorize proceedings *in rem* against it, according to established practice. Such proceedings constitute "due process of law," well known in our courts, familiar to the English Exchequer, and having the sanction of the ancient Roman jurisprudence. If any authority were needed for this statement, it is found in the judgment of the Supreme Court of the United States in the case of the *Palmyra*, where it is said: —

"Many cases exist where there is both a forfeiture *in rem* and a personal penalty. But in neither class of cases has it ever been decided that the prosecutions were dependent upon each other; but the practice has been, and so this Court understand the law to be, that the proceeding *in rem* stands independent of, and wholly unaffected by, any criminal proceeding *in personam*."[1]

The reason for proceedings *in rem* is, doubtless, that *the thing* is in a certain sense an offender, or at least has coöperated with the offender, — as a ship in the slave-trade. But the same reason prevails, although perhaps to less extent, in proceedings against rebel property, which, if not an offender, has at least coöperated with

[1] 12 Wheaton, R., 14, 15.

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the offender hardly less than the ship in the slave-trade. Through his property the traitor is enabled to devote himself to treason, and to follow its accursed trade, waging war against his country; so that his property may be considered guilty also. But the condemnation of the property cannot be a bar to proceedings against the traitor himself, should he fall within our power. The two are distinct, although identical in their primary object, which is punishment.

Pardon me, Sir, if, dwelling on these things, I feel humbled that the course of the debate imposes such necessity. Standing, as we do, face to face with enemies striking at the life of the Republic, it is painful to find ourselves subjected to all the embarrassments of a criminal proceeding, as if this war were an indictment, and the army and navy of the United States, now mustered on land and sea, were only a *posse comitatus*. It should not be so. The Rebels have gone outside of the Constitution to make war upon their country. It is for us to pursue them as enemies outside of the Constitution, where they wickedly place themselves, and where the Constitution concurs in placing them also. So doing, we simply obey the Constitution, and act in all respects constitutionally.

II.

AND this brings me to the second chief head of inquiry, not less important than the first: *What are the Rights against Enemies which Congress may exercise in War?*

Clearly the United States may exercise all the Rights

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of War which according to International Law belong to independent states. In affirming this proposition, I waive for the present all question whether these rights are to be exercised by Congress or by the President. It is sufficient that every nation has in this respect perfect equality; nor can any Rights of War accorded to other nations be denied to the United States. Harsh and repulsive as these rights unquestionably are, they are derived from the overruling, instinctive laws of self-defence, common to nations as to individuals. Every community having the form and character of sovereignty has a right to national life, and in defence of such life may put forth all its energies. Any other principle would leave it the wretched prey of wicked men, abroad or at home. In vain you accord the rights of sovereignty, if you despoil it of other rights without which sovereignty is only a name. "I think, therefore I am," was the sententious utterance by which the first of modern philosophers demonstrated personal existence. "I am, therefore I have rights," is the declaration of every sovereignty, when its existence is assailed.

Pardon me, if I interpose again to remind you of the essential difference between these rights and those others just considered. Though incident to sovereignty, they are not to be confounded with those peaceful rights which are all exhausted in a penal statute within the limitations of the Constitution. The difference between a judge and a general, between the halter of the executioner and the sword of the soldier, between the open palm and the clenched fist, is not greater than that between these two classes of rights. They are different in origin, different in extent, and different in object.

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I rejoice to believe that civilization has already done much to mitigate the Rights of War; and it is among long cherished visions, which present events cannot make me renounce, that the time is coming when all these rights will be further softened to the mood of permanent peace. Though in the lapse of generations changed in many things, especially as regards non-combatants and private property on land, these rights still exist under the sanction of the Law of Nations, to be claimed whenever war prevails. It is absurd to accord the right to do a thing without according the means necessary to the end. And since war, which is nothing less than organized force, is permitted, all the means to its effective prosecution are permitted also, tempered always by that humanity which strengthens while it charms.

I begin this inquiry by putting aside all Rights of War against persons. In battle, persons are slain or captured, and, if captured, detained as prisoners till the close of the war, unless previously released by exchange or clemency. But these rights do not enter into the present discussion, which concerns property only, and not persons. From the nature of the case, it is only against property, or what is claimed as such, that confiscation is directed. Therefore I say nothing of persons, nor shall I consider any question of personal rights. According to the Rights of War, property, although inanimate, shares the guilt of its owner. Like him, it is criminal, and may be prosecuted to condemnation in tribunals constituted for the purpose, without any of those immunities claimed by persons accused of crime. It is *Rights of War against the property of an enemy* which I now consider.

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If we resort to the earlier authorities, not excepting Grotius himself, we find these rights stated most austerely. I shall not go back to any such statement, but content myself with one of later date. You may find it harsh; but here it is.

"Since this is the very condition of war, that enemies are despoiled of all right and proscribed, it stands to reason that whatever property of an enemy is found in his enemy's country changes its owner and goes to the treasury. It is customary, moreover, in almost every declaration of war, to ordain that goods of the enemy, as well those found among us as those taken in war, be confiscated. . . . . Pursuant to the mere Right of War, even immovables could be sold and their price turned into the treasury, as is the practice in regard to movables; but throughout almost all Europe only a register is made of immovables, in order that during the war the treasury may receive their rents and profits, but at the termination of the war the immovables themselves are by treaty restored to the former owners."[1]

These are the words of the eminent Dutch publicist, Bynkershoek, in the first half of the last century. In adducing them now I present them as adopted by Mr. Jefferson, in his remarkable answer to the note of the British minister at Philadelphia on the confiscations of the American Revolution. There are no words of greater weight in any writer on the Law of Nations. But Mr. Jefferson did not content himself with quotation. In the same state paper he thus declares unquestionable rights:—

"It cannot be denied that the state of war strictly permits a nation to seize the property of its enemies *found within its*

[1] Bynkershoek, Quæstiones Juris Publici, Lib. I. cap. 7.

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own limits or taken in war, and in whatever form it exists, whether in action or possession."[1]

This sententious statement is under date of 1792, and, when we consider the circumstances which called it forth, may be accepted as American doctrine. But even in our own day, since the beginning of the present war, the same principle has been stated yet more sententiously in another quarter. The Lord Advocate of Scotland, in the British House of Commons, as late as 17th March of the present year, declared:—

"The honorable gentleman spoke as if it was no principle of war that private rights should suffer at the hands of the adverse belligerent. But that was the true principle of war. If war was not to be defined—as it very nearly might be—as a denial of the rights of private property to the enemy, that denial was certainly one of the essential ingredients in it."[2]

In quoting these authorities, which are general in their bearing, I do not stop to consider their modification according to the discretion of the belligerent power. I accept them as the starting-point in the present inquiry, and assume that by the Rights of War enemy property may be taken. But rights with regard to such property are modified by the *locality* of the property; and this consideration makes it proper to consider them under two heads: *first*, rights with regard to enemy property actually within the national jurisdiction; and, *secondly*, rights with regard to enemy property actually outside the national jurisdiction. It is easy to see, that,

[1] Mr. Jefferson to Mr. Hammond, May 29, 1792: American State Papers, Foreign Relations, Vol. I. p. 201.

[2] Speech on International Maritime Law, March 17, 1862: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXV. col. 1608.

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in the present war, rights against enemy property actually outside the national jurisdiction must exist *a fortiori* against such property actually within the jurisdiction. But, for the sake of clearness, I shall speak of them separately.

First. I begin with the Rights of War over enemy property actually within the national jurisdiction. In stating the general rule, I adopt the language of a recent English authority.

"Although there have been so many conventions granting exemption from the liabilities resulting from a state of war, the right to seize the property of enemies found in our territory when war breaks out remains indisputable, according to the Law of Nations, wherever there is no such special convention. All jurists, including the most recent, such as De Martens and Klüber, agree in this decision."[1]

This statement is general, but unquestionable even in its rigor. For the sake of clearness and accuracy it must be considered in its application to different kinds of property.

1. It is undeniable, that, in generality, the rule must embrace real property, or, as termed by the Roman Law and the Continental systems of jurisprudence, *immovables;* but so important an authority as Vattel excepts this species of property, for the reason, that, being acquired by consent of the sovereign, it is as if it belonged to his own subjects.[2] But personal property is also under the same safeguard, and yet it is not embraced within the exception. If such, indeed, be the reason for

[1] Manning, Commentaries on the Law of Nations, p. 127.
[2] Vattel, Book III. ch. 5, sec. 76.

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the exception of real property, *it loses all applicability where the property belongs to an enemy who began by breaking faith on his side.* Surely, whatever the immunity of an ordinary enemy, it is difficult to see how a rebel enemy, whose hostility is bad faith in arms, can plead any safeguard. *Cessante ratione, cessat et ipsa lex,* is an approved maxim of the law; and since with us the reason of Vattel does not exist, the exception which he propounds need not be recognized, to the disparagement of the general rule.

2. The rule is necessarily applicable to all personal property, or, as it is otherwise called, *movables.* On this head there is hardly a dissenting voice, while the Supreme Court of the United States, in a case constantly cited in this debate, has solemnly affirmed it. I refer to *Brown* v. *United States,*[1] where the broad principle is assumed that war gives to the sovereign full right to confiscate the property of the enemy, wherever found, and that the mitigations of the rule, derived from modern civilization, may affect the exercise of the right, but cannot impair the right itself. Goods of the enemy actually in the country, and all vessels and cargoes afloat in our ports, at the commencement of hostilities, were declared liable to confiscation. In England, it is the constant usage, under the name of "Droits of Admiralty," to seize and condemn property of an enemy in its ports at the breaking out of hostilities.[2] But this was not followed in the Crimean War, although the claim itself has never been abandoned.

3. The rule, in strictness, also embraces private debts due to an enemy. Although justly obnoxious to the

[1] 8 Cranch, S. C. R., 110.

[2] Wheaton, Elements of International Law, Part IV. ch. 1, § 11.

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charge of harshness, and uncongenial with an age of universal commerce, this application is recognized by the judicial authorities of the United States. Between debts contracted under faith of laws and property acquired under faith of the same laws reason draws no distinction; and the right of the sovereign to confiscate debts is precisely the same with the right to confiscate other property within the country on the breaking out of war. Both, it is said, require some special act expressing the sovereign will, and both depend less on any flexible rule of International Law than on paramount political considerations, which International Law will not control. Of course, just so far as slaves are regarded as property, or as bound to service or labor, they cannot constitute an exception to this rule, while the political considerations entering so largely into its application have with regard to them commanding force. In their case, by natural metamorphosis, confiscation becomes emancipation.

Such are recognized Rights of War touching enemy property within the national jurisdiction.

Secondly. The same broad rule with which I began may be stated touching enemy property beyond the national jurisdiction, subject, of course, to mitigation from usage, policy, and humanity, but still existing, to be employed in the discretion of the belligerent power. It may be illustrated by different classes of cases.

1. Public property of all kinds belonging to an enemy, — that is, property of the government or prince, — including lands, forests, fortresses, munitions of war, movables, — is all subject to seizure and appropriation by the conqueror, who may transfer the same by valid

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title, substituting himself, in this respect, for the displaced government or prince. It is obvious that in the case of immovables the title is finally assured only by the establishment of peace, while in the case of movables it is complete from the moment the property comes within the firm possession of the captor so as to be alienated indefeasibly. In harmony with the military prepossessions of ancient Rome, such title was considered the best to be had, and its symbol was a spear.

2. Private property of an enemy at sea, or afloat in port, is indiscriminately liable to capture and confiscation; but the title is assured only by condemnation in a competent court of prize.

3. While private property of an enemy on land, according to modern practice, is exempt from seizure simply as private property, yet it is exposed to seizure in certain specified cases. Indeed, it is more correct to say, with the excellent Manning, that it "is still considered as liable to seizure," under circumstances constituting in themselves a necessity, of which the conqueror is judge.[1] It need not be added that this extraordinary power must be so used as not to assume the character of spoliation. It must have an object essential to the conduct of the war. But, with such object, it cannot be questioned. The obvious reason for exemption is, that a private individual is not personally responsible, as the government or prince. *But every rebel is personally responsible.*

4. Private property of an enemy on land may be taken as a penalty for the illegal acts of individuals, or of the community to which they belong. The exer-

[1] Law of Nations, p. 136.

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cise of this right is vindicated only by peculiar circumstances; but it is clearly among the recognized agencies of war, and it is easy to imagine that at times it may be important, especially in dealing with a dishonest rebellion.

5. Private property of an enemy on land may be taken for contributions to support the war. This has been done in times past on a large scale. Napoleon adopted the rule that war should support itself. Upon the invasion of Mexico by the armies of the United States, in 1846, the commanding generals were at first instructed to abstain from taking private property without purchase at a fair price; but subsequent instructions were of a severer character. It was declared by Mr. Marcy, at the time Secretary of War, that an invading army had the unquestionable right to draw supplies from the enemy without paying for them, and to require contributions for its support, and to make the enemy feel the weight of the war.[1] Such contributions are sometimes called "requisitions," and a German writer on the Law of Nations says that it was Washington who "invented the expression and the thing."[2] Possibly the expression; but the thing is as old as war.

6. Private property of an enemy on land may be taken on the field of battle, in operations of siege, or the storming of a place refusing to capitulate. This passes under the offensive name of "booty" or "loot." In the late capture of the imperial palace of Pekin by the allied forces of France and England, this right was illustrated by the surrender of its contents, including

[1] Halleck, International Law, p. 460.

[2] "Washington, dans la guerre de l'Amérique, inventa l'expression et la chose." — KLÜBER, *Droit des Gens Moderne de l'Europe*, (Paris, 1831,) Tom. II. p. 83, sec. 251, note.

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silks, porcelain, and furniture, to the lawless cupidity of an excited soldiery.

7. Pretended property of an enemy in slaves may unquestionably be taken, and, when taken, will of course be at the disposal of the captor. If slaves are regarded as property, then will their confiscation come precisely within the rule already stated. But, since slaves are men, there is still another rule of public law applicable to them. It is clear, that, where there is an intestine division in an enemy country, we may take advantage of it, according to Halleck, in his recent work on International Law, "without scruple."[1] But Slavery is more than an intestine division; it is a constant state of war. The ancient Scythians said to Alexander: "Between the master and slave no friendship exists; even in peace the Rights of War are still preserved."[2] Giving freedom to slaves, a nation in war simply takes advantage of the actual condition of things. But there is another vindication of this right, which I prefer to present in the language of Vattel. After declaring that "in conscience and by the laws of equity" we may be obliged to restore "booty" recovered from an enemy who had taken it in unjust war, this humane publicist proceeds as follows.

"The obligation is more certain and more extensive with regard to a people whom our enemy has unjustly oppressed. For a people thus spoiled of their liberty never renounce the hope of recovering it. If they have not voluntarily incorporated themselves with the state by which they have been subdued, if they have not freely aided her in the war against us, *we ought certainly so to use our victory as not merely to give*

[1] Page 410.
[2] Q. Curtius, Lib. VII. cap. 8.

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them a new master, but to break their chains. To deliver an oppressed people is a noble fruit of victory; it is a valuable advantage gained thus to acquire a faithful friend."[1]

These are not the words of a visionary, or of a speculator, or of an agitator, but of a publicist, an acknowledged authority on the Law of Nations.

Therefore, according to the Rights of War, slaves, if regarded as property, may be declared free; or if regarded as men, they may be declared free, under two acknowledged rules: *first,* of self-interest, to procure an ally; and, *secondly,* of conscience and equity, to do an act of justice ennobling victory.

Such, Sir, are acknowledged Rights of War with regard to enemy property, whether within or beyond our territorial jurisdiction. I do little more than state these rights, without stopping to comment. If they seem harsh, it is because war in essential character is harsh. It is sufficient for our present purpose that they exist.

Of course, all these rights belong to the United States. There is not one of them which can be denied. They are ours under that great title of Independence by which our place was assured in the Family of Nations. Dormant in peace, they are aroused into activity only by the breath of war, when they all place themselves at our bidding, to be employed at our own time, in our own way, and according to our own discretion, subject only to that enlightened public opinion which now rules the civilized world.

[1] Law of Nations, Book III. Ch. 18, § 203.

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Belonging to the United States by virtue of International Law, and being essential to self-defence, they are naturally deposited with the *supreme power*, which holds the issues of peace and war. Doubtless there are Rights of War, embracing confiscation, contribution, and liberation, to be exercised by any commanding general in the field, or to be ordered by the President, according to the exigency. Mr. Marcy was not ignorant of his duty, when, by instructions from Washington, in the name of the President, he directed the levy of contributions in Mexico. In European countries all these Rights of War which I have reviewed to-day are deposited with the executive alone, — as in England with the Queen in Council, and in France and Russia with the Emperor; but in the United States they are deposited with the legislative branch, being the President, Senate, and House of Representatives, whose joint action becomes the supreme law of the land. The Constitution is not silent on this question. It expressly provides that Congress shall have power, first, "to declare war," and thus set in motion all the Rights of War; secondly, "to grant letters of marque and reprisal," being two special agencies of war; thirdly, "to make rules concerning captures on land and water," which power of itself embraces the whole field of confiscation, contribution, and liberation; fourthly, "to raise and support armies," which power, of course, comprehends all means for this purpose known to the Rights of War; fifthly, "to provide and maintain a navy," plainly according to the Rights of War; sixthly, "to make rules for the government and regulation of the land and naval forces," another power involving confiscation, contribution, and liberation; and, seventhly, "to provide for calling forth the militia to

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execute the laws of the Union, suppress insurrections, and repel invasions," a power which again sets in motion all the Rights of War. But, as if to leave nothing undone, the Constitution further empowers Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." In pursuance of these powers, Congress has already enacted upwards of one hundred articles of war for the government of the army, one of which provides for the security of public stores taken from the enemy. It has also sanctioned the blockade of the Rebel ports according to International Law. And only at the present session we have enacted an additional article to regulate the conduct of officers and men towards slaves seeking shelter in camp. Proceeding further on the present occasion, it will act in harmony with its own precedents, as well as with its declared powers, according to the very words of the Constitution. Language cannot be broader. Under its comprehensive scope there is nothing essential to the prosecution of the war, its conduct, its support, or its success, — yes, Sir, there can be nothing essential to its success, which is not positively within the province of Congress. There is not one of the Rights of War which Congress may not invoke. There is not a single weapon in its terrible arsenal which Congress may not grasp.

Such are indubitable powers of Congress. It is not questioned that these may all be employed against a public enemy; but there are Senators who strangely hesitate to employ them against that worst enemy of all, who to hostility adds treason, and teaches his country

> "How sharper than a serpent's tooth it is
> To have a thankless child."

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The rebel in arms is an enemy, and something more; nor is there any Right of War which may not be employed against him in its extremest rigor. In appealing to war, he has voluntarily renounced all safeguards of the Constitution, and put himself beyond its pale. In ranging himself among enemies, he has broken faith so as to lose completely all immunity from the strictest penalties of war. As an enemy, he must be encountered; nor can our army be delayed in the exercise of the Rights of War by any misapplied questions of *ex post facto*, bills of attainder, attainder of treason, due process of law, or exemption from forfeiture. If we may shoot rebel enemies in battle, if we may shut them up in fortresses or prisons, if we may bombard their forts, if we may occupy their fields, if we may appropriate their crops, if we may blockade their ports, if we may seize their vessels, if we may capture their cities, it is vain to say that we may not exercise against them the other associate prerogatives of war. Nor can any technical question of constitutional rights be interposed in one case more than another. Every prerogative of confiscation, requisition, or liberation known in war may be exercised against rebels in arms precisely as against public enemies. Ours are belligerent rights to the fullest extent.

Sir, the case is strong. The Rebels are not only criminals, they are also enemies, whose property is actually within the territorial jurisdiction of the United States; so that, according to the Supreme Court, it only remains for Congress to declare the Rights of War to be exercised against them. The case of Brown,[1] so often cited in this debate, affirms that enemy property actually within our territorial jurisdiction can be seized only by

[1] 8 Cranch, S. C. R., 110.

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virtue of an Act of Congress, and recognizes the complete liability of all such property, when actually within such territorial jurisdiction. It is therefore, in all respects, a binding authority, precisely applicable; so that Senators who would impair its force must deny either that the Rebels are enemies or that their property is actually within the territorial jurisdiction of the United States. Assuming that they are enemies, and that their property is actually within our territorial jurisdiction, the power of Congress is complete; and it is not to be confounded with that of a commanding general in the field, or of the President as commander-in-chief of the armies.

Pardon me, if I dwell on one point with regard to the property of rebels in arms by which it is distinguishable from the private property of enemies in international war. *Every rebel in arms is directly responsible for his conduct*, as in international war the government or prince is directly responsible; so that on principle he can claim no exemption from any penalty of war. And since Public Law is founded on reason, it follows that the rule subjecting to seizure and forfeiture all property, real as well as personal, of the hostile government or prince should be applied to all property, real and personal, of the rebel in arms. It is impossible for him to claim the immunity conceded generally to private property of an enemy in international war, and also conceded generally to land of an enemy within our territorial jurisdiction. For the rebel in arms there is no just exemption.

When claiming these powers for Congress, it must also be stated that there is a limitation of time with regard to their exercise. Whatever is done against the

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Rebels in our character as belligerents under the Rights of War must be done during war, and not after its close. Naturally the Rights of War end with the war, except in those consequences which have become fixed during the war. With the establishment of peace the Rights of Peace resume sway, and all proceedings are according to the prescribed forms of the Constitution. Instead of laws silenced by arms, there are arms submissive to laws. Instead of courts martial or military proceedings, there are the ordinary courts of justice with all constitutional safeguards. If this change needed illustration, it would be found in a memorable passage of French history. Marshal Ney, who had deserted Louis the Eighteenth to welcome Napoleon from Elba, was, after the capitulation of Paris, handed over to a council of war for trial; but the council, composed of marshals of France, declared itself incompetent, since the case involved treason, and the accused was carried before the Chamber of Peers, of which he was a member, according to the requirements of the French Charter. His condemnation and execution have been indignantly criticized, but the form of trial was a homage to the pacification which had been proclaimed. Therefore let it be borne in mind that all proceedings founded on the Rights of War will expire, when the Constitution is again established throughout the country. They are temporary and incidental, in order to secure that blessed peace which we all seek.

So completely are these rights distinguished from ordinary municipal proceedings against crime, that they are administered by tribunals constituted for the purpose, with well-known proceedings of their own. Courts of Prize have a fixed place in the judicial system of the

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United States, and their jurisdiction excludes that of municipal tribunals, so that no action can be brought in a court of Common Law on account of a seizure *jure belli*. It is their province to hear all cases of prize or capture, — in short, every case of property arising under the Rights of War; and although practically these cases are chiefly maritime, yet the jurisdiction of such courts is held to embrace hostile seizures on shore.[1] The hearing is by the court alone, without a jury, substantially according to forms derived from the Roman Law; and the ordinary judgment is against the thing captured, or *in rem*, pronouncing its condemnation and distribution. In every case of prize or capture, involving a question of property, and not of crime, these proceedings constitute "due process of law," so as to be completely effective under the Constitution, and, according to acknowledged principles, they supersede the jurisdiction of all mere municipal tribunals.

Among the few cases illustrating this exclusive jurisdiction in matters of capture and prize on land is one which arose from the exercise of military power in a conquered province in India, and was at last considered and decided by the Privy Council in England, after most elaborate argument by the most eminent barristers of the time. The facts are few. Upon the conquest of Poonah, in 1817, Mr. Mountstuart Elphinstone, perhaps the most finished man, and of completest gentleness, who ever exercised power in British India, was appointed "sole commissioner for the settlement of the territory conquered, with authority over all the civil and military officers employed in it." In the discharge of

[1] Le Caux *v.* Eden, Douglas, R., 594; Faith et al. *v.* Pearson, Holt, N. P. Cases, 118.

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his dictatorial functions, he proceeded to appoint a "provisional collector and magistrate of the city of Poonah and the adjacent country," whom he instructed "to deprive the enemy of his resources, and in this and all other points to make everything subservient to the conduct of the war." After indicating certain crimes to be treated with summary punishment, he proceeded to confer plenary powers, saying: "All other crimes you will investigate according to the forms of justice usual in the country, modified as you may think expedient; and in all cases you will endeavor to enforce the existing laws and customs, *unless where they are clearly repugnant to reason and natural equity.*" Under these instructions the provisional collector seized several bags of gold, in the house of a prominent enemy. In an action before the Supreme Court of Bombay for the value of this treasure, and of a quantity of jewels and shawls taken by the military, judgment was given for the claimant. But this was overruled by the Court of Appeals in England, on the ground, that, in the actual state of warfare at that time, there was no jurisdiction over a question of prize and capture in an ordinary municipal court. At the bar it was argued:—

"No country can ever be thoroughly brought under subjection, if it is to be held, that, where there has been a conquest and no capitulation, the mere publication of a proclamation, desiring the people to be quiet, and telling them what means would be resorted to, if they were not so, so far reduces the country under the civil rule, that the army loses its control, and the municipal courts acquire altogether jurisdiction, so that every action of the officers in the direction of military affairs is liable to their cognizance." [1]

[1] Elphinstone v. Bedreechund, 1 Knapp, Privy Council R., 337.

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In giving judgment, Lord Tenterden, at the time Chief Justice of England, stated the conclusion, as follows.

"We think the proper character of the transaction was that of *hostile seizure*, made, if not *flagrante*, yet *nondum cessante bello*, regard being had both to the time, the place, and the person, and consequently that the municipal court had no jurisdiction to adjudge upon the subject, but that, if anything was done amiss, recourse could only be had to the Government for redress." [1]

This is an important and leading authority, interesting in all respects; but I adduce it now only to show that municipal courts cannot properly take cognizance of questions of property arising under the Rights of War. This established principle testifies to the essential difference between *rights against criminals* and *rights against enemies.* There is a different tribunal for each claim.

I have said what I have to say on the law of this matter, bringing it to the standard of the Constitution and of International Law, and I have exhibited the powers of Congress in their two fountains. It is for you to determine out of which you will draw, or, indeed, if you will not draw from both. Regarding the Rebels as criminals, you may so pursue and punish them. Regarding them as enemies, you may blast them with that summary vengeance which is among the dread agencies of war, while, by an act of beneficent justice, you elevate a race, and change this national calamity into a sacred triumph. Or, regarding them both as

[1] Elphinstone *v.* Bedreechund, 1 Knapp, Privy Council R., 360, 361.

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criminals and as enemies, you may marshal against them all the double penalties of rebellion and war, or, better still, the penalties of rebellion and the triumphs of war.

It now remains to borrow such instruction as we can from the *history* of kindred measures. And here I am not tempted to depart from that frankness which is with me an instinct and a study. If there be anything in the past to serve as warning, I shall not keep it back, although I ask you to consider carefully the true value of these instances, and how far they are a lesson to us. If there be any course to which I incline, it will be abandoned at once, when shown not to be for the highest good. I have no theories to maintain at the expense of my country or of truth.

Confiscation is hardly less ancient than national life. It began with history. It appears in the Scriptures, where Ahab took the vineyard of Naboth, and David gave away the goods of a confederate of Absalom. The Senator from Wisconsin [Mr. DOOLITTLE] reminded us that it prevailed among the Persians and Macedonians. In the better days of the Roman Republic it was little known; but it appeared with the vengeful proscriptions of Sylla; and Cæsar himself, always forbearing, yet, while striving to mitigate the penalties of the Catilinarian conspirators, moved a confiscation of all their property to the public treasury. It flourished under the Emperors, who made it alternately the instrument of tyranny and of cupidity. But there were virtuous Emperors, like Antoninus Pius, under whom the goods of a convict were abandoned to his children, and like Trajan,

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under whom confiscation was unknown. Among the reforms of Justinian, in his immortal revision of the law, this penalty disappeared, except in cases of treason.[1] But these instances illustrate confiscation only as punishment. Throughout Roman history it had been inseparable from war. The auction was an incident of the camp. It was a distribution of bounty lands among the soldiers of Octavius, after the establishment of his power, that drove Virgil from his paternal acres to seek imperial favor at Rome.

In modern times confiscation became a constant instrument of government, both in punishment and in war. It was an essential incident to the feudal system, which was in itself a form of government. Ruthlessly exercised, sometimes against individuals and sometimes against whole classes, it was converted into an engine of vengeance and robbery, which spared neither genius nor numbers. In Florence it was directed against Dante, and in Holland against Grotius, while in early England it was the power by which William of Normandy despoiled the Saxons of their lands and parcelled them among his followers. In Germany, during the period of theological conflict which darkened that great country, it was often used against Protestants, and was at one time menaced on a gigantic scale. The Papal Nuncio sought nothing less than the confiscation of all the goods of heretics. Spain was not less intolerant than Germany, and the story of the Moors and the Jews, stripped of their possessions and sent forth as wanderers, protests against such injustice. In early France confiscation was not idle, although in one instance it received an application which modern criticism

[1] Merlin, Répertoire de Jurisprudence, art. CONFISCATION, § I.

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will not reject, when, by special ordinance, *rebels* were declared to be *enemies*, and their property was subjected to confiscation as Prize of War.

By the law of England, it was the inseparable incident of treason, flourishing always in Ireland, where rebellion was chronic, and showing itself in Great Britain whenever rebellion occurred. But it was simply as part of punishment, precisely as the traitor was drawn and quartered and his blood corrupted, all according to law. The scaffold turned over to the Government all the estate of its victims. But there is another instance in English history entirely different in character, where Henry the Eighth, in warfare with the Catholic Church, did not hesitate to despoil the monasteries of their great possessions, with a clear annual revenue of one hundred and thirty-one thousand six hundred and seven pounds, or, according to Bishop Burnet, ten times that sum "in true value."[1] This property, so enormous in those days, wrested at once from the mortmain of the Church, testifies to the boldness, if not the policy, with which the power was wielded.

It is in modern France that confiscation has played its greatest part, and been the most formidable weapon, whether of punishment or of war. At first abolished by the Revolution, as a relic of royal oppression, it was at length adopted by the Revolution. Amidst the dangers menacing the country, this sacrifice was pronounced essential to save it, and successive laws were passed, beginning as early as November, 1789, by which it was authorized. Never before in history was confiscation so sweeping. It aroused at the time the eloquent indignation of Burke, and still causes a sigh among all who

[1] History of the Reformation (Oxford, 1829), Vol. I. p. 538.

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think less of principles than of privileges. From an official report to the First Consul, it appears that before 1801 sales were authorized by the Government to the fabulous amount of two thousand five hundred and fifty-five millions of francs, or above five hundred millions of dollars, while still a large mass, estimated at seven hundred million francs, of confiscated property remained unsold.[1] The whole vast possessions of the Church disappeared in this chasm.

Cruel as were many of the consequences, this confiscation must be judged as part of the Revolution whose temper it shared; nor is it easy to condemn anything but its excesses, unless you are ready to say that the safety of France, torn by domestic foes and invaded from abroad, was not worth securing, or that equality before the law, which is now the most assured possession of that great nation, was not worth obtaining. It was part of the broad scheme of Napoleon, moved by politic generosity, to mitigate as far as possible the operation of this promiscuous spoliation, especially by restraining it, according to the principle of the bill which I have introduced, to the most obnoxious persons, — although this sharp ruler knew too well what was due to titles once fixed by Government to contemplate any restoration of landed property already alienated. "There are," he exclaimed, in the Council of State, "above one hundred thousand names on these unhappy lists: it is enough to turn one's head. . . . . *The list must be reduced by three fourths of its number, to the names of such as are known to be hostile to the Government.*"[2] Hostility to the Government constituted with him suffi-

[1] Alison, History of Europe, (5th edit.,) Vol. IV. pp. 708, 709, note.
[2] Ibid., p. 705, note.

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cient reason for continued denial of all rights of property or citizenship. And so jealous was he on this point, that, when he heard that some who were allowed to enter upon their yet unalienated lands had proceeded to cut down the forests, partly from necessity and partly to transfer funds abroad, he interfered peremptorily, in words applicable to our present condition: "We cannot allow the greatest enemies of the Republic, the defenders of old prejudices, to recover their fortunes and despoil France." [1] This episode of history, so suggestive to us, will not be complete, if I do not mention, that, through this policy of confiscation, France passed from the hands of dominant proprietors, with extended possessions, into the hands of those small farmers now constituting so important a feature in its social and political life. Nor can I neglect to add, that kindred in character, though involving no loss of property, was the entire obliteration at the same time of the historic Provinces of France, and the substitution of new divisions into Departments, with new landmarks and new names, so that ancient landmarks and ancient names, quickening so many prejudices, no longer served to separate the people.

But this story is not yet ended. Accustomed to confiscation at home, France did not hesitate to exercise it abroad, under the name of contributions; nor was there anything her strong hand did not appropriate, — sometimes, it might be, the precious treasures of Art, paintings of Raffaelle, Titian, or Paul Potter, enshrined in foreign museums, and sometimes the ornaments of churches, palaces, and streets. Often in hard money were these contributions levied. For instance, in 1807,

[1] Alison, History of Europe, Vol. IV. p. 706, note.

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Napoleon exacted from Prussia, with little more than five million inhabitants, a war contribution of more than one hundred and twenty millions of dollars; and in 1809, the same conqueror exacted from Austria a like contribution of about fifty millions of dollars. In kindred spirit, Davoust, one of his marshals, stationed at Hamburg, levied upon that single commercial city, during the short term of twelve months, contributions amounting to more than fifteen, or, according to other accounts, twenty-five, millions of dollars. But the day of reckoning came, when France, humbled at last, was constrained to accept peace from the victorious allies encamped at Paris. The paintings, the marbles, and the ornaments ravished from foreign capitals were all taken back, while immense sums were exacted for expenses of the war, and also for spoliations during the Revolution, amounting in all to three hundred million dollars. Such is the lesson of France.

And still later, actually in our day, the large possessions of the late king, Louis Philippe, were confiscated by Louis Napoleon, while every member of the Orléans family was compelled to dispose of his property before the expiration of a year, under penalty of forfeiture and confiscation. This harsh act had its origin in the assumed necessities of self-defence, that this powerful family might be excluded from France, not only in person, but in property also, and have no foothold or influence there.

While it is easy to see that these interesting instances are only slightly applicable to our country, yet I do not disown any suggestion of caution or clemency they inculcate. Other instances in our own history

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are more applicable. All are aware that during the Revolution the property of Tories, loyalists, and refugees was confiscated; but I doubt if Senators know the extent to which this was done, or the animosity by which it was impelled. Out of many illustrations, I select the early language of the patriot Hawley, of Massachusetts, in a letter to Elbridge Gerry, under date of July 17, 1776. "Can we subsist," said this patriot, "did any state ever subsist, without exterminating traitors? . . . . It is amazingly wonderful, that, having no capital punishment for our intestine enemies, we have not been utterly ruined before now."[1] The statutes of the time are most authentic testimony. I hold in my hand a list, amounting to *eighty-eight* in number, which I have arranged according to States. Some are very severe, as may be imagined from the titles, which I proceed to give; but they show, beyond assertion or argument, how, under the exigencies of war for National Independence, the power of confiscation was recognized and employed. Each title is a witness.

1. *New Hampshire.* — To confiscate estates of sundry persons therein named. November 28, 1778.
2. *Massachusetts.* — To prevent the return of certain persons therein named, and others who had left that State, or either of the United States, and joined the enemies thereof. 1778.
3. To confiscate the estates of certain notorious conspirators against the government and liberties of the inhabitants of the late Province, now State, of Massachusetts Bay. 1779.
4. For repealing two laws of the State, and for asserting the rights of that free and sovereign Common-

[1] Austin's Life of Elbridge Gerry, Vol. I. p. 207.

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wealth to expel such aliens as may be dangerous to the peace and good order of government. March 24, 1784.

5. In addition to an Act made and passed March 24, 1784, repealing two laws of this State. November 10, 1784.

6. *Rhode Island.* — To confiscate and sequester estates, and banish persons of certain descriptions. October, 1775.

7–13. To confiscate and sequester estates, and banish persons of certain descriptions. February, March, May, June, July, August, October, 1776.

14, 15. To confiscate and sequester estates, and banish persons of certain descriptions. February, October, 1778.

16–20. To confiscate and sequester estates, and banish persons of certain descriptions. February, May, August, September, October, 1779.

21–23. To confiscate and sequester estates, and banish persons of certain descriptions. July, September, October, 1780.

24, 25. To confiscate and sequester estates, and banish persons of certain descriptions. January, May, 1781.

26–28. To confiscate and sequester estates, and banish persons of certain descriptions. June, October, November, 1782.

29–32. To confiscate and sequester estates, and banish persons of certain descriptions. February, May, June, October, 1783.

33. To send out of the State N. Spink and John Underwood, who had formerly joined the enemy, and were returned into Rhode Island. May 27, 1783.

34. To send William Young, theretofore banished, out of the State, and forbidden to return at his peril. June 8, 1783.

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35. Allowing William Brenton, late an absentee, to visit his family for one week, then sent away, not to return. June 12, 1783.
36. To banish S. Knowles (whose estate had been forfeited), on pain of death, if he return. October, 1783.
37. *Connecticut.* — Directing certain confiscated estates to be sold.
38. *New York.* — For the forfeiture and sales of the estates of persons who have adhered to the enemies of the State. October 22, 1779.
39. For the immediate sale of part of the confiscated estates. March 10, 1780.
40. Approving the Act of Congress relative to the finances of the United States, and making provision for redeeming that State's proportion of bills of credit to be emitted. June 15, 1780.
41. To procure a sum in specie, for the purpose of redeeming a portion of the bills emitted, &c. October 7, 1780.
42. For granting a more effectual relief in cases of certain trespasses. March 17, 1783.
43. For suspending the prosecutions therein mentioned. March 21, 1783.
44. To amend and extend certain Acts. May 4, 1784.
45. To preserve the freedom and independence of the State, &c. May 12, 1784.
46. *New Jersey.* — To punish traitors and disaffected persons. October 4, 1776.
47. For taking charge of and leasing the real estates, and for forfeiting personal estates, of certain fugitives and offenders. April 18, 1778.
48. For forfeiting to and vesting in the State the real estates of certain fugitives and offenders. December 11, 1778.

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49. Supplemental to the Act to punish traitors and disaffected persons. October 3, 1782.
50. To appropriate a certain forfeited estate. December 23, 1783.
51. *Pennsylvania.* — For the attainder of divers traitors, and for vesting their estates in the Commonwealth, if they render not themselves by a certain day. March 6, 1778.
52. To attaint Henry Gordon, unless he surrender himself by a given day, and the seizure of his estates by the agents of forfeited estates confirmed. January 31, 1783.
53. *Delaware.* — Declaring estates of certain persons forfeited, and themselves incapable of being elected to any office. February 5, 1778.
54. *Maryland.* — For calling out of circulation the quota of the State of the bills of credit issued by Congress. October, 1780.
55. To seize, confiscate, and appropriate all British property within the State. October, 1780.
56. To appoint commissioners to preserve confiscated British property. October, 1780.
57. To procure a loan, and for the sale of escheat lands and the confiscated British property therein mentioned. October, 1780.
58. For the benefit of the children of Major Andrew Leitch. June 15, 1782.
59. To vest certain powers in the Governor and Council. November, 1785.
60. To empower the Governor and Council to compound with the discoverers of British property, and for other purposes. November, 1788.
61. *Virginia.* — For sequestering British property, enabling those indebted to British subjects to pay off such debts, &c. October, 1777.

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62. Concerning escheats and forfeitures from British subjects. May, 1779.
63. For removal of seat of government. May, 1779.
64, 65. To amend the Act concerning escheats and forfeitures. May, October, 1779.
66. To adjust and regulate pay and accounts of officers of Virginia line. November, 1781.
67. For providing more effectual funds for redemption of certificates. May, 1782.
68. Prohibiting the migration of certain persons to that Commonwealth, &c. October, 1783.
69. To explain, amend, &c., the several Acts for the admission of emigrants to the rights of citizenship, and prohibiting the migration of certain persons to that Commonwealth. October, 1786.
70. *North Carolina.* — For confiscating the property of all such persons as are inimical to the United States, &c. November, 1777.
71. To carry into effect the last mentioned act. January, 1779.
72. Directing the sale of confiscated property. October, 1784.
73. To describe and ascertain such persons as owed allegiance to the State, and to impose certain disqualifications on certain persons therein named. October, 1784.
74. To amend the last mentioned Act. November, 1785.
75. To secure and quiet in their possessions all such as have or may purchase lands, goods, &c., sold or hereafter to be sold by the commissioners of forfeited estates. December 29, 1785.
76. Act of pardon and oblivion. April, 1788.
77. *South Carolina.* — For disposing of certain estates and banishing certain persons therein mentioned. February 26, 1782.

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78. To amend the last mentioned Act. March 16, 1783.
79. To vest land, late property of James Holmes, in certain persons in trust for the benefit of a public school. August 15, 1783.
80. For restoring to certain persons their estates, and for permitting the said persons to return, &c. March 26, 1784.
81. For amending and explaining the Confiscation Act. March 26, 1784.
82. To amend the Confiscation Act, and for other purposes therein mentioned. March 22, 1786.
83. *Georgia.* — For inflicting penalties on, and confiscating the estates of, such persons as are therein declared guilty of treason, &c. May 4, 1782.
84. To point out the mode for the recovery of property unlawfully acquired under the British usurpation, and withheld from the rightful owners, &c. February 17, 1783.
85. Releasing certain persons from their bargains, &c. July 29, 1783.
86. For ascertaining the rights of aliens, and pointing out a mode for the admission of citizens. February 7, 1785.
87. To authorize the auditor to liquidate the demands of such persons as have claims against the confiscated estates. February 22, 1785.
88. To compel the settlement of public accounts, for inflicting penalties, and for vesting auditor with certain powers. February 10, 1787.[1]

Such is the array which illustrates the terrible earnestness of those times. In their struggle for National Independence, our fathers did not hesitate to employ all the acknowledged Rights of War; nor did they higgle

[1] American State Papers, Foreign Relations, Vol. I. pp. 198, 199.

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over questions of form with regard to enemies in arms against them. To this extent, at least, we may be instructed by their example, even if we discard their precedents.

In the negotiations for the acknowledgment of National Independence these Acts were much considered. It does not appear, however, that their legality was drawn into question, although, as is seen, they exercised the double rights of sovereignty and of war. The British Commissioner, Mr. Oswald, expresses himself, under date of November 4, 1782, as follows.

"You may remember, that, from the very first beginning of our negotiation for settling a peace between Great Britain and America, I insisted that you should positively stipulate for the restoration of the property of all those persons, under the denomination of the Loyalists or Refugees, who have taken part with Great Britain in the present war: or, if the property had been resold, and passed into such a variety of hands as to render the restoration impracticable, (which you asserted to be the case in many instances,) you should stipulate for a compensation or indemnification to those persons adequate to their losses."[1]

The American Commissioners, John Adams, Benjamin Franklin, and John Jay, declared in reply, that "the restoration of such of the estates of the refugees as have been confiscated is impracticable, because they were confiscated by laws of particular States, and in many instances have passed by legal titles through several hands." As to the demand of compensation for these persons, the Commissioners said: "We forbear enu-

[1] Letter to United States Commissioners: American State Papers, Foreign Relations, Vol. I. p. 219.

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merating our reasons for thinking it ill-founded."[1] In the course of the conference, and by way of reply or set-off, gross instances were adduced of outrages by the British troops in "the carrying off of goods from Boston, Philadelphia, and the Carolinas, Georgia, Virginia, &c., and the burning of the towns." Franklin mentioned "the case of Philadelphia, and the carrying off of effects there, even his own library." Laurens added "the plunders in Carolina of negroes, plate, &c."[2] In a letter from Franklin to the British Commissioner, under date of November 26, 1782, the pretension of the loyalists was finally repelled in the plainest words.

"You may well remember, that, in the beginning of our conferences, before the other Commissioners arrived, on your mentioning to me a retribution for the loyalists whose estates had been forfeited, ... I gave it as my opinion and advice, honestly and cordially, that, if a reconciliation was intended, no mention should be made in our negotiations of those people; for, they having done infinite mischief to our properties, by wantonly burning and destroying farm-houses, villages, and towns, if compensation for their losses were insisted on, we should certainly exhibit against it an account of all the ravages they had committed, which would necessarily recall to view scenes of barbarity that must inflame, instead of conciliating, and tend to perpetuate an enmity that we all profess a desire of extinguishing. . . . .

"Your ministers require that we should receive again into our bosom those who have been our bitterest enemies, and restore their properties who have destroyed ours, — and this while the wounds they have given us are still bleeding. It is many years since your nation expelled the Stuarts and

[1] American State Papers, Foreign Relations, Vol. I. p. 219.

[2] Extract from Mr. Adams's Journal respecting Peace, November 29, 1782: Ibid., p. 220.

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their adherents, and confiscated their estates. Much of your resentment against them may by this time be abated; yet, if we should propose it, and insist on it, as an article of our treaty with you, that that family should be recalled and the forfeited estates of its friends restored, would you think us serious in our professions of earnestly desiring peace?

"I must repeat my opinion, that it is best for you to drop all mention of the refugees." [1]

But on this occasion there was a compromise. Instead of positive stipulations in behalf of the loyalists, it was agreed in the treaty, "that the Congress shall earnestly *recommend* it to the Legislatures of the respective States to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to *real* British subjects, and also of the estates, rights, and properties of persons resident in districts in the possession of his Majesty's arms, *and who have not borne arms against the said United States.*" [2] Thus, while in every other article of the treaty it was agreed that certain things *shall be done*, here it was only agreed to *recommend* that they shall be done; and even the recommendation of restitution was confined to what are called "*real* British subjects," and others "who have not borne arms against the United States," — thus evidently recognizing the liability of those who did not come within these two exceptions.

After the adoption of our Constitution, this article came under discussion between the United States and Great Britain, when Mr. Jefferson, in the most elaborate diplomatic paper of his life, ably vindicated the conduct

[1] American State Papers, Foreign Relations, Vol. I. p. 221.

[2] Definitive Treaty of Peace, Art. V.: United States Statutes at Large, Vol. VIII. p. 82.

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of our Government. It was on this occasion that he quoted the words of Bynkershoek, that "it stands to reason that whatever property of an enemy is found in his enemy's country changes its owner and goes to the treasury, ... even immovables, as is the practice in regard to movables."[1] And in the course of his argument he distinctly asserts that "an Act of the Legislature confiscating lands stands in place of *an office found* in ordinary cases, — and that, on the passage of the Act, as on the finding of the office, the State stands *ipso facto* possessed of the lands without a formal entry. The confiscation, then, is complete by the passage of the Act, both the title and possession being divested out of the former proprietor and vested in the State."[2]

This is strong language. Not only in our diplomacy, but also in our courts, was the validity of these Acts upheld. Mr. Jefferson was sustained by the Supreme Court of the United States in an early case on the confiscation of British debts by Virginia,[3] where it was declared that "a State may make what rules it pleases, and those rules must necessarily have place within itself,"[4] — that "the right to confiscate the property of enemies during war is derived from a state of war, and is called the Rights of War,"[5] — and that "the right acquired by war depends on the power of seizing the enemy's effects."[6] The last remark has a subtle significance. But the whole case was stated at the bar by John Marshall,

[1] American State Papers, Foreign Relations, Vol. I. p. 201.
[2] Ibid., p. 205.
[3] Ware *v.* Hylton et al., 3 Dallas, R., 222.
[4] Ibid., p. 282.
[5] Ibid., p. 227.
[6] Ibid., p. 264.

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afterwards our honored Chief Justice, in words applicable to our own times.

"It has been conceded that independent nations have in general the right of confiscation, and that Virginia at the time of passing her law was an independent nation. But it is contended, that, from the peculiar circumstances of the war, the citizens of each of the contending nations having been members of the same government, the general right of confiscation did not apply, and ought not to be exercised. It is not, however, necessary to show a parallel case in history, since it is incumbent on those who wish to impair the sovereignty of Virginia to establish on principle or precedent the justice of their exception. *That State, being engaged in a war, necessarily possessed the powers of war, and confiscation is one of those powers, weakening the party against whom it is employed, and strengthening the party that employs it.*"[1]

In closing what I have to say of the confiscation bills of the Revolution, I cannot disguise that they have been thought severe in some cases beyond the acknowledged exigencies of the times; but, admitting their severity, they testify none the less to those Rights of War in which they had their origin.

Such, Sir, are examples of history, so far as I can gather them, to guide on the present occasion. The embarrassment of Hercules is constantly repeated. There are paths to avoid, as well as paths to take; and it is for you to determine, under the lights of the past, how your course shall be directed.

There are considerations of *policy*, and, I rejoice to believe, of justice also, which furnish illumination such

[1] Ware v. Hylton et al., 3 Dallas, R., 210.

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as cannot be found in any other instances of history. If we go astray, it must be from blindness.

In determining what powers to exercise, you will be guided to a certain extent by the object you seek to accomplish. Do you seek really to put down the Rebellion, and to tread it out forever, or do you seek only the passage of a penal statute? Do you seek a new and decisive weapon in the war our country is compelled to wage, or do you seek nothing more than to punish a few rebels? Or, if the object you seek is simply punishment, do you wish it to be sure and effective, or only in name? Are you in earnest to strike this rebellion with all the force sanctioned by the Rights of War, or do you refuse to use anything beyond the peaceful process of Municipal Law? I put these questions sincerely and kindly. You will answer them by your votes. If you are not in earnest against the rebellion now arrayed in war, if you are content *to seem* without acting, *to seem* without striking, in short, *to seem* rather than *to be*, you will pass a new penal statute, and nothing more.

It is clear that such a statute will be of perfect inefficiency. It will not produce even a moderate intimidation,— not so much as a Quaker gun. With the provision in our Constitution applicable to jury trials in criminal cases, it is obvious that throughout the whole Rebel country there can be no conviction under such statute. Proceedings would fail through the disagreement of the jury, while the efforts of counsel would make every case an occasion of irritation. People talk flippantly of the gallows as the certain doom of the Rebels. This is a mistake. For weal or woe, the gallows is out of the question. It is not possible as a

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punishment for this rebellion.[1] Nor would any forfeiture or confiscation whatever be sanctioned by a jury in the Rebel country. I think that in this judgment I do not err. But if this be correct, surely we should take all proper steps to avoid such failure of justice. Let Senators see things as they are; let us not deceive ourselves or deceive others. A new statute against treason will be simply a few more illusive pages on the statute-book, and that is all.

I cannot doubt that Senators are in earnest, that they mean what they say, and that they intend to do all in their power, by all proper legislation, to bring the war to a final close. But if this be their purpose, they will not hesitate to employ all the acknowledged Rights of War calculated to promote this end. Two transcendent powers have been exercised without a murmur: first, to raise armies, and, secondly, to raise money. These were essential to the end. But there is another power, without which, I fear, the end will escape us. It is that of confiscation and liberation; and this power is just as constitutional as the other two. The occasion for its exercise is found in the same terrible necessity. An army is not a *posse comitatus;* nor is it, when in actual war, face to face with the enemy, amenable to the ordinary provisions of the Constitution. It takes life without a jury trial, or any other process of law; and we have already seen, it is by virtue of the same Right of War that the property of enemies may be taken, and freedom given to their slaves. On the exercise of these rights there can be no check or limitation in the Constitution. Any such check or limitation

[1] How completely this early prophecy has been fulfilled appears in our history.

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would be irrational. War cannot be conducted *in vinculis*. Seeking to fasten upon it the restraints of the Constitution, you repeat the ancient tyranny which compelled its victims to fight in chains. Glorious as it is that the citizen is surrounded by the safeguards of the Constitution, yet this rule is superseded by war, bringing into being other rights which know no master. An Italian publicist has said that there is no right which does not, in some measure, impinge upon some other right. But this is not correct. The Rights of War can never impinge upon any rights under the Constitution, nor can any rights under the Constitution impinge upon the Rights of War. Rights, when properly understood, harmonize with each other.

Assuming, then, what is so amply demonstrated, that the Rights of War are ours without abridgment, and assuming also that you will not allow the national cause, which has enlisted such mighty energies, to be thwarted through any failure on your part, I ask you to exercise these rights in such way as to insure promptly and surely that permanent peace in which is contained all we desire. But to this end mere victory will not be enough. The Rebellion must be so completely crushed that it cannot again break forth, while its authors have penalties to bear, all of which may be accomplished only by such a bill as I have proposed. The reasons of policy, as well as of duty, are controlling.

But while all desire to see the Rebellion completely crushed, there may be difference with regard to the Rights of War to be exercised. Some may be for part; others may be for all. Some may reject the examples of the past; others may insist upon them. It

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is for you to choose; but, in making election, you will not forget the object in view. At another point I have leaned on the authority of Grotius. Turning now to Vattel, a writer of masculine understanding, who has done much to popularize the Law of Nations, I am influenced by the consideration, that, less austere than others, he seems always inspired by the free air of his native Switzerland, and filled with the desire of doing good, so that what he sanctions cannot be regarded as illiberal or harsh. In grouping the details entering into the object proposed, this benevolent master teaches that we may seek these things:—

1. Possession of what belongs to us;
2. Expenses and charges of the war, with reparation of damages;
3. Reduction of the enemy, so that he shall be incapable of unjust violence;
4. Punishment of the enemy.[1]

And in order to arrive at these results, the Rights of War are ours, to be employed in our discretion. Nor is it to be forgotten that these rights are without any of those limitations which modern times have adopted with regard to the private property of enemies in international war, and that, on reason and principle, which are the foundations of all Public Law, *every rebel who voluntarily becomes an enemy is as completely responsible in all his property, whether real or personal, as a hostile Government or Prince,* whose responsibility to this extent is unquestioned.

Such in detail is the object that is all contained in the idea of peace. In this work it is needless to say there is no place for any sentiment of hate or any sug-

[1] Law of Nations, Book III. ch. 9.

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gestion of vengeance. There can be no exaction and no punishment beyond the necessity of the case, — nothing harsh, nothing excessive. Lenity and pardon become the conqueror more even than victory. "Do in time of peace the most good, and in time of war the least evil possible: such is the Law of Nations." These are the admirable words of an eminent French magistrate and statesman.[1] In this spirit it is our duty to assuage the calamities of war, and especially to spare an inoffensive population.

But not so should we deal with conspirators. For those who organized this great crime and let slip the dogs of war there can be no penalty too great. They should be not only punished to the extent of our power, but stripped of all means of influence, so that, should their lives be spared, they may be doomed to wear them out in poverty, if not in exile. To this end their property must be taken. Their poor deluded followers may be safely pardoned. Left to all the privileges of citizenship in a regenerated land, they will unite in judgment of leaders who have been to them such cruel taskmasters.

The property of the leaders consists largely of land, owned in extensive plantations. It is just that these should be broken up, so that never again can they be nurseries of conspiracy or disaffection. Partitioned into small estates, they will afford homes to many now homeless, while their peculiar and overbearing social influence will be destroyed. Poor neighbors, so long dupes and victims, will become independent possessors

[1] Count Portalis, at the installation of the Council of Prizes in 1800: Cussy, Phases et Causes Célèbres du Droit Maritime des Nations, Tom. I. pp. 179, 206, 264. Montesquieu had previously enunciated the same principle, with a limitation: L'Esprit des Lois, Liv. I. ch. 3.

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of the soil. Brave soldiers, who have left their Northern skies to fight the battles of their country, resting at last from their victories, and changing their swords for ploughshares, will fill the land with Northern industry and Northern principles.

I say little of personal property, because, although justly liable to confiscation, yet it is easy to see that it is of much less importance than the land, except so far as slaves are falsely classed under that head.

Vattel says that in our day a soldier would not dare to boast of having killed the enemy's king; and there seems to be similar timidity on our part towards Slavery, which is our enemy's king. If this king were removed, tranquillity would reign. Charles the Twelfth, of Sweden, did not hesitate to say that the cannoneers were perfectly right in directing their shots at him; for the war would instantly end, if they could kill him; whereas they would reap little from killing his principal officers. There is no shot in this war so effective as one against Slavery, which is king above all officers; nor is there any better augury of complete success than the willingness, at last, to fire upon this wicked king. The illusions through which Slavery has become strong must be abandoned.

The slaves of Rebels cannot be regarded as property, real or personal. Though claimed as property by their masters, and though too often recognized as such by individuals in the National Government, it is the glory of our Constitution that it treats slaves always as "persons." At home, beneath the lash and local law, they may be chattels; but they are known to our Constitution only as *men*. In this simple and indisputable

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fact there is a distinction, clear as justice itself, between the pretended property in slaves and all other property, real or personal. Being men, they are bound to allegiance, and entitled to reciprocal protection. It only remains that a proper appeal should be made to their natural and instinctive loyalty. Nor can any pretended property of their masters supersede this claim, I will not say of eminent domain, but of eminent power, inherent in the National Government, which at all times has a right to the services of all. Declaring the slaves free, you will at once do more than in any other way, whether to conquer, to pacify, to punish, or to bless. You will take from the Rebellion its mainspring of activity and strength; you will stop its chief source of provisions and supplies; you will remove a motive and temptation to prolonged resistance; and you will destroy forever that disturbing influence, which, so long as allowed, will keep this land a volcano ever ready to break forth anew. While accomplishing this work, you will at the same time do an act of wise economy, giving new value to all the lands of Slavery, and opening untold springs of wealth; and you will also do an act of justice, destined to raise our national name more than any triumph of war or any skill in peace. God, in His beneficence, offers to nations, as to individuals, opportunity, *opportunity*, OPPORTUNITY, which, of all things, is most to be desired. Never before in history has He offered such as is ours here. Do not fail to seize it. The blow with which we smite an accursed Rebellion will at the same time enrich and bless; nor is there any prosperity or happiness it will not scatter abundantly throughout the land. Such an act will be an epoch, marking the change from Barbarism to Civiliza-

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tion. By old Rights of War, still prevalent in Africa, freemen were made slaves; but by the Rights of War which I ask you to exercise slaves will be made freemen.

Mr. President, if you seek Indemnity for the Past and Security for the Future, if you seek the national unity under the Constitution of the United States, here is the way. Strike down the leaders of the Rebellion, and lift up the slaves.

> "To tame the proud, the fettered slave to free, —
> These are imperial arts, and worthy thee."

Then will there be Indemnity for the Past such as no nation ever before was able to win, and there will be Security for the Future such as no nation ever before enjoyed, while the Republic, strengthened and glorified, will be assured forever, one and indivisible.

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NO SURRENDER OF FUGITIVE SLAVES IN WASHINGTON.

RESOLUTION AND REMARKS IN THE SENATE, MAY 23, 1862.

MAY 23d, the Senate proceeded to consider a resolution offered the preceding day by Mr. Sumner: —

"*Resolved*, That the Committee on the District of Columbia be directed to consider what legislation, if any, is needed to protect persons of African descent in Washington from unconstitutional seizure as fugitive slaves, or from seizure by disloyal persons."

Mr. Sumner said: —

MR. PRESIDENT, — The question presented in this resolution has a practical value to-day, when, here in Washington, we are shocked by efforts of slave-hunters, coming from an adjoining State, to carry off human beings as slaves. This is menaced on a large scale. Whole hecatombs are to be sacrificed. A Philadelphia paper of this morning, "The Press," which I find on my table, contains, under the telegraphic head, an account of certain proceedings instituted by persons called Commissioners, who have undertaken gravely to decide, that, in a case of human freedom, "it was discretionary with them to allow cross-examination as to identity and ownership." According to these wise Daniels, a person may be doomed to Slavery, even without any cross-examination of witnesses against him. The statement of this assumption shows the outrage which

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offends justice and common sense, and, I am happy to believe, the Constitution also, even if it be assumed that anybody now can be treated as a slave in the District.

The much discussed clause of the Constitution bearing on this question provides that "no person held to service or labor *in one State*, under the laws thereof, *escaping into another*, shall, in consequence of any law or regulation therein, be discharged from such service or labor." It will be observed that this is limited to escape *from one State into another State*. Nothing is said of escape into Territories, or into the District of Columbia. If made applicable to Territories or the District, it is only by inference and deduction, and not by virtue of any express words.

Notwithstanding this omission in the Constitution, the Act of 1793, providing for the surrender of fugitives from service, was made applicable to escape into Territories, and this questionable precedent was followed in the terrible Act of 1850. But neither of these Acts was made applicable to escape into the District of Columbia. While Slavery prevailed in the District, it was difficult to raise a question with regard to the surrender of fugitive slaves. But since Freedom has happily become the law here, the case is materially changed. Slaves at last are beginning to have rights. And the question arises, whether, in the absence of express power in the Constitution, and also in the absence of express words in any statute, commissioners can undertake to surrender men into Slavery. Even if there were express words in the statute, we should be obliged to find express words also in the Constitution, which is the source of the power. But there are no words applicable to this pretension either in statute or Constitution.

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Sir, I have always understood, that, in the interpretation of statutes, and especially of the Constitution, every word is to be interpreted in favor of life and liberty, — *in favorem vitæ ac libertatis.* Indeed, one of the received maxims of the Common Law says strongly, "Impious and cruel is he to be adjudged who does not favor Liberty."[1] If these maxims are not entirely rejected, it is impossible to find, either in statute or Constitution, any power to gratify the hunters now thronging this District in quest of human prey. It is *casus omissus* in our texts legislative or constitutional, and no commissioner, in the plenitude of petty power, can undertake to supply words which do not appear in statute or Constitution. It is for them only to administer the law as it is, and not to make it, especially against Freedom. They are not greater than the Constitution; and they should know that human freedom, in the estimation of every civilized jurisprudence, is priceless.

The question which I now raise, if I may employ the language of lawyers, is proper for the courts. A court in Washington, properly inspired, could not hesitate in its conclusion. It would deny any such offensive prerogative, unless sanctioned by clear and positive words. In the absence of such words, it would rejoice to set aside the whole pretension. It would not hesitate or halt, but it would do it gladly, generously, justly, and make a new precedent by which civilization should be advanced. Yet this is too much to expect from the courts of Washington, whose sense of justice has been enfeebled by the atmosphere of Slavery.

This pretension is aggravated by the fact that many

[1] "Impius et crudelis judicandus est, qui libertati non favet." — FORTESCUE, *De Laudibus Legum Anglia*, Cap. XLII.

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of these hunters are notoriously disloyal. Sir, it is hard that our Constitution should be violated, and men hurried into Slavery, at the trumpery process of such offensive characters. I think the Committee will find a remedy.

On motion of Mr. Grimes, the resolution was amended by substituting the Committee on the Judiciary for the Committee on the District of Columbia, and then agreed to.

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INFORMATION IN REGARD TO FREEING SLAVES BY OUR ADVANCING ARMIES.

RESOLUTION IN THE SENATE, MAY 26, 1862.

MR. SUMNER submitted the following resolution for consideration.

RESOLVED, That the Secretary of War be requested to communicate to the Senate copies of any instructions to commanding generals, in pursuance of the Act of Congress, approved August 6, 1861, setting free slaves who have been employed by the consent of their masters against the Government and lawful authority of the United States; and also to inform the Senate if any steps have been taken to make this statute effective, and to insure its due execution by our advancing armies, for the benefit of slaves who have been so employed.

June 4th, the resolution was considered and agreed to.

July 10th, a report was received from the Secretary of War, entitled "Instructions to commanding generals in regard to the freeing of slaves," which, besides the instructions, contained communications from General Phelps and General Butler.[1]

[1] Executive Documents, 37th Cong. 2d Sess., Senate, No. 67.

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HELP FROM SLAVES, WITH RECIPROCAL PROTECTION IN THEIR RIGHTS AS MEN.

RESOLUTION IN THE SENATE, MAY 26, 1862.

THE following resolution was introduced, as an expression of opinion, and an appeal to the country.

RESOLVED, That, in the prosecution of the present war for the suppression of a wicked Rebellion, the time has come for the Government of the United States to appeal to the loyalty of the whole people everywhere, but especially in the Rebel districts, and to invite all, without distinction of color, to make their loyalty manifest by ceasing to fight or labor for the Rebels, and also by rendering every assistance in their power to the cause of the Constitution and the Union, according to their ability, whether by arms, or labor, or information, or in any other way; and since protection and allegiance are reciprocal duties, dependent upon each other, it is the further duty of the Government of the United States to maintain all such loyal people, without distinction of color, in their rights as *men*, according to the principles of the Declaration of Independence.

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TAX ON COTTON.

SPEECHES IN THE SENATE, MAY 27 AND JUNE 4, 1862.

IN the consideration of the Internal Tax Bill Mr. Sumner took an active part, as the *Congressional Globe* attests.

When this bill came from the House of Representatives, it contained a tax of one cent a pound on cotton. The Finance Committee of the Senate reported against this tax. Mr. Sumner, though never disposed to spare Slavery, was unwilling to bear hard on an interest so important as cotton to the whole country, especially to the South when redeemed, as well as to the manufactures of the North, and therefore exerted himself against the tax. May 27th, he spoke as follows.

MR. PRESIDENT, — I am in favor of the proposition of the Committee, which seems to me sound in principle and policy.

There are reasons against taxing cotton, — first, from the character of the product itself, and, secondly, from the effect of the tax on manufactures.

If we look at the character of the product, we find, in the first place, that it is agricultural, — peculiar, indeed, to one section of the country, but as much an agricultural product as grain, hemp, and flax, which are left untouched by this bill. There should be reason for adopting the tax in one case and not in the other. No such reason exists.

But cotton is not only an agricultural product, it is also a leading export. Now I raise no constitutional question on the power to tax exports, although it may

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not be entirely easy to reconcile such tax with the language of the Constitution: "No tax or duty shall be laid on articles exported from any State." The object of this clause was to prevent discrimination among States through the taxing power. But not questioning the power in the present case, it seems to me that its exercise is of doubtful policy, according to principles of political economy. I do not think that it is the policy of civilized nations to tax exports, which play an important part, first, in quickening commerce, and, secondly, in furnishing the equivalent of imports.

Then there is difficulty arising from the condition of the country. Until the Cotton States are restored to the Union, little or no revenue can be expected from any such tax. But if their representatives were once more here, can anybody suppose it possible to tax this great staple of the South, while the great staples of the West — grain, provisions, and wool — are free? It seems to me unadvisable to attempt, in the absence of these representatives, what we would not attempt, if they were present, — in other words, to do what is of doubtful equity, simply because we have the votes. Our tax, at best, can be little more than prospective. Is it not better to wait till it may be a reality?

Even if at another time the tax on cotton seemed politic, I doubt if it can be so regarded for some time to come. Considering the peculiar condition of things, there is small doubt that the country for the next five years will have greater interest in encouraging the production of cotton than in taxing it.

Sometimes it is said, that, if cotton is not taxed, the Cotton States will escape taxation, which would be a practical injustice to other parts of the country. But

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I am not satisfied that we cannot tax their slaves. Besides, the $ 200,000,000 of cotton exported assures the importation of $ 200,000,000 of foreign products, which, with twenty-five per cent duty, gives a revenue of $ 50,000,000 annually.

But if cotton must be taxed, it should not be by a specific tax, but by a tax *ad valorem*, and for obvious reason. Cotton is sold in the market under seven different grades, varying materially in value. These grades are classified as follows, beginning with the lowest or least valuable, and ending with the highest or most valuable: (1.) ordinary, (2.) good ordinary, (3.) low middling, (4.) middling, (5.) good middling, (6.) middling fair, (7.) Sea Island. For ten years, from 1850 to 1860, the average price of ordinary cotton was six and five eighths cents a pound, while middling fair, the highest grade except Sea Island, averaged twelve cents a pound. A tax of one cent a pound on ordinary cotton would be over fifteen per cent on its value, while one cent a pound on middling fair cotton would be eight and one third per cent, and the same tax on Sea Island cotton, commanding the highest price of all, would be less than five per cent.

The tax on cotton, if any is imposed, ought not to exceed five per cent *ad valorem*. In the natural course of events, without interruption of war, the cotton exported would have amounted in value for a year to $ 200,000,000. If to this we add the value of cotton used in the United States, $ 35,000,000, we shall have the sum-total of $ 235,000,000. A tax of five per cent *ad valorem* on this would be $ 11,750,000.

The proposed tax of one cent a pound is much larger. During the year ending the 30th of June, 1860, the

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value of the cotton exported was $ 191,806,555, and the number of pounds exported was 1,767,686,338. A tax of one cent a pound would be $ 17,676,863, — a very large sum, which I should be glad to pour into our Treasury. But, assuming the value of this cotton at ten and eight tenths cents a pound, the tax of one cent a pound will be above nine and one fourth per cent, — nearly double what the tax ought to be.

Consider now, if you please, the effect of this tax on cotton manufactures. It appears that we manufacture annually about seven hundred thousand bales of cotton, one half of which is of the three lower grades, and is worked into what is called by manufacturers coarse goods. Of these one pound of cotton will make about two and a half yards, worth twenty cents. Now a tax of three per cent on this cloth would be six mills. Add the tax of one cent a pound on cotton, and you have a total of sixteen mills, making a tax of eight per cent on the value of the cloth, — a higher tax than is imposed by the Tax Bill on anything except dogs, whiskey, and tobacco.

The rest of the cotton manufactured in our country is worked into what are called fine goods, of which one pound will make from four to eight yards, valued at thirty to forty cents, or, on an average, thirty-five cents. The tax of three per cent on these goods at thirty-five cents would be ten and a half mills. Add the tax of one cent on the cotton, which is ten mills, and you have the total of twenty and a half mills, making a tax on this article of more than five and eight tenths per cent.

Of the finest goods, a pound of cotton would make cloth worth seventy-five cents. The tax upon this class would be four and one third per cent.

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Thus the cheap goods used by the poorer people will be taxed much higher than the finer goods used by the rich. Are you ready to set up this discrimination?

There is an important export trade of cotton manufactures, which must not be forgotten. But these are entirely of the class known as coarse goods. For instance, during the year ending June 30, 1860, cotton goods exported amounted to $10,934,796. This commerce is conducted under difficulties. Necessarily it encounters strong competition in the foreign markets, and must have failed, but for the anomalous opportunities it enjoyed in China and the East Indies, where these goods were often sent as remittances instead of bills of exchange, it being cheaper to pay for them in Boston even more than they will bring at their destination than to pay the premium of exchange. But this business, having such anomalous support, cannot bear additional burden. It will be annihilated, — at least I am so assured by those who ought to know.

The proposed tax upon coarse goods used in our country is found, on calculation, equal to seven per cent on the capital invested in their manufacture, and on exported goods it is equal to five per cent. If cotton must be taxed, it ought not to be higher than five per cent, and I have already shown that it ought to be *ad valorem*. On goods exported there should be a drawback in favor of the manufacturer, not only of the three per cent on the goods, but also of the five per cent on the cotton. If the three per cent tax on all goods used in this country were reduced to one and one half per cent *ad valorem*, this, with the five per cent tax on the cotton, would be equal to three and one sixth per cent *ad valorem* on coarse goods, and to three and one third per cent on fine

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goods. But I prefer the proposition of the Committee, leaving the bill otherwise as it is.

In conclusion, I have to say that the cotton cloths manufactured in our country are nearly as much a necessary as breadstuffs, entering into the daily life of all, whether rich or poor, like daily bread.

In the debate which ensued, Mr. Davis, of Kentucky, alluded to Mr. Sumner.

"I have been very strongly arrested by the debate to-day, and I very much approve of its spirit and its tenor. I am glad to see gentlemen quitting visionary subjects" —

MR. CLARK. Do not lug them in.

— "and coming to questions of legitimate political economy; and especially I am glad that the Senators from Massachusetts have shown a disposition to come to such legitimate ground of legislation."

In the same speech the Kentucky Senator indulged in prophecy.

"And if the slaves were liberated, if the theory of the gentlemen from Massachusetts and other Senators were carried into operation, I believe, as certainly as I believe that I am now addressing the Senate of the United States, that there would not be one fifth as much cotton raised in any year in the next five years as has been raised, according to the estimate of the Senator from Rhode Island, for the past year. I do not believe that the man lives, that the child lives, who will ever see, after the universal emancipation of the slaves, under any state of labor, or of care, or of application of labor, either the labor of men or of machinery, that the production of cotton in the United States will reach one half of five millions of bags." [1]

[1] This prophecy, like so many others with regard to Slavery, has failed, as appears from a Comparative Statement of the Cotton Crops of the United States for the three years last preceding the War (which years had the largest crops ever produced), and for the three years last past, prepared by Mr. B. F. Nourse, of Boston, December, 1871.

YEAR, OR COTTON SEASON.	CROP PRODUCED.		Aggregate Value at Ports in Gold.
	Bales.	Pounds Gross.	
1858-59	4,019,000	1,876,800,000	$ 134,225,000
1859-60	4,861,000	2,343,000,000	207,190,000
1860-61	3,849,000	1,886,240,000	170,000,000
Gold value, three years			$ 541,415,000
1868-69	2,367,000	1,103,957,000	$ 201,835,000
1869-70	3,123,000	1,441,067,000	242,195,000
1870-71	4,352,000	2,021,651,000	236,770,000
Gold value, three years			$ 680,800,000

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The amendment striking out the tax was adopted, — Yeas 20, Nays 16.

June 3d, at the next stage of the bill, the question was presented again, when Mr. Sumner renewed his opposition to the tax. In the course of his remarks the following passages occurred.

MR. SUMNER. Then, Sir, as I had the honor of saying in the former debate, suppose the vacant seats on the other side of the Chamber were filled, suppose Senators here from the Cotton States, would you think of imposing a tax on cotton without in the same bill imposing a tax on the agricultural products of the North? You would not, I am sure; and, Sir, in their absence, I will not do what I would not do, if I could, were they here.

MR. GRIMES. Would you not abolish Slavery in the District of Columbia?

MR. SUMNER. I would do that, were they here, and propose it to their faces, and be too happy in the opportunity.

June 4th, the debate was continued, when Mr. Sumner spoke as follows.

I AM admonished by my friend, the Senator from Maine [Mr. FESSENDEN], not to say anything. I shall say very little. I am in favor of reducing the tax from one cent to half a cent, and I am also in favor of striking out the whole tax. If there must be a tax, I wish the smallest; and if I can have the attention of the Senator from Wisconsin [Mr. HOWE], whose remarks were so candid, I should like to put him a question. You heard him say that he would not impose any tax which he knew would really be burdensome on the manufacturers. Other Senators have repeated the same thing.

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Now, Sir, on whom will he rely, in determining whether the tax will be burdensome? I take it that the manufacturers are competent witnesses, if not the best witnesses; and Senators from manufacturing States, when they express themselves on the question, are to be heard. But it is the clear opinion of the manufacturers that the proposed tax will be burdensome, that it will almost annihilate a certain branch of trade with China and the East Indies, and that it will be most oppressive on the coarser fabrics at home. The tax on the latter will swell to as much as seven per cent, which is a very large tax, larger than is imposed on anything else in the bill, unless it be whiskey and dogs.

I put it to the Senator from Wisconsin, who so candidly said that he would not impose a tax that he knew to be burdensome, whose testimony will he accept? On what will he rely? Is it his own knowledge, his own impressions, his own imagination, if you please? In answer to all these I present the positive testimony of those really familiar with the subject.

Here, then, is the question in a nutshell. In imposing this tax, you have on one side the certainty of undue burden on a special interest; and what have you on the other side? An uncertainty. Who here can say that the proposed tax will be productive? Sir, we have not the cotton in our hands. Through the machinations of wicked men, it has ceased to be within our possession. I remember in my childhood being much amused with a little poem entitled "Oxen in the Skies," which pleasantly described a contest between two senseless persons as to who should own certain imagined oxen in the skies, — that is, a contest about something not within reach. The cotton you propose

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to tax is not within reach. I trust that it may soon be. Should we not act on existing facts, rather than on hopes?

There is a larger view of the question. While you begin to tax the agricultural products of the country, you open the door to that great experiment. If the Senate is ready to march in that direction, I will not say whether I am not ready to march also; but the Senate should not commence the experiment without considering where it leads. In this whole bill you do not tax a single agricultural product. Why, therefore, make an exception of cotton? If you begin with cotton, where will you stop? Must you not also tax hemp, flax, and corn? Why not? Not that I am in favor of such taxation; but where in principle are you to stop? Sir, I put these questions as a warning to Senators.

The original proposition from the House of Representatives was amended by substituting "one half cent" a pound, instead of "one cent," — Yeas 30, Nays 10.

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TAX ON SLAVE-MASTERS.

SPEECHES IN THE SENATE, ON AMENDMENT TO THE INTERNAL TAX BILL, MAY 28 AND JUNE 6, 1862.

WHILE voting and speaking against a tax on cotton, Mr. Sumner was anxious to tax Slavery, and this he sought to accomplish by a tax on those who pretended to hold slaves.

May 28th, he moved the following amendment: —

"*And be it further enacted*, That any person who shall claim the service or labor for life of any other person, under the laws of any State, shall pay, on account of such person so claimed, the sum of ten dollars."

And then said: —

MR. PRESIDENT, — A tax of ten dollars on account of each slave will give $40,000,000. And in putting the tax at ten dollars I follow the precedent of the Constitution, which taxes slaves imported at ten dollars. I do not disguise that on this question I have shared the doubts of others. Of course, no tax would be tolerable which gave any sanction to property in man; and it has been feared that a tax on slaves might be interpreted into such sanction. This fear is not unnatural to persons shocked by the idea of Slavery. It was early avowed by Roger Sherman, of Connecticut, whose sensibility is recorded by Madison in his report of the debates in the Federal Convention.

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"He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were property." [1]

Again, a few days later, when the same clause of the Constitution was under discussion, Mr. Sherman repeated his objection, and the following debate occurred, which seems to exhaust the argument on both sides.

"MR. SHERMAN was against this second part, as acknowledging men to be property, by taxing them as such under the character of slaves.

"COLONEL MASON. Not to tax will be equivalent to a bounty on the importation of slaves.

"MR. GORHAM thought that Mr. Sherman should consider the duty, *not as implying that slaves are property*, but as a discouragement to the importation of them.

"MR. GOUVERNEUR MORRIS remarked, that, as the clause now stands, it implies that the Legislature may tax freemen imported.

"MR. SHERMAN, in answer to Mr. Gorham, observed, that the smallness of the duty showed revenue to be the object, not the discouragement of the importation.

"MR. MADISON thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not, like merchandise, consumed, &c.

"COLONEL MASON, in answer to Mr. Gouverneur Morris. The provision, as it stands, was necessary for the case of convicts, in order to prevent the introduction of them." [2]

After this discussion, the clause as found in the Constitution, laying "a tax or duty on such importation, not exceeding ten dollars for each person," was adopted, *nem. con.* Thus it appears that Sherman, Morris, Frank-

[1] Debates in the Federal Convention, August 22, 1787: Madison Papers, Vol. III. p. 1396.

[2] Debates, August 25: Ibid., pp. 1429, 1430.

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lin, and Gerry, to say nothing of Madison, all known for opposition to Slavery, and determination to give it no sanction, concurred in this proposition. They felt that a tax or duty, thus arranged, was not a sanction of Slavery.

The same question is now presented to us. Clearly there can be no such thing as property in man. The whole idea is offensive and odious. There is no revenue, whatever be its amount, to compensate for this recognition. Better be poor, better be pinched in means, better forego much needed supplies, than obtain help through any such sacrifice. But the same considerations which induced our fathers, with all their avowed scruples, to sustain such a tax or duty, may properly influence us.

It is the boast of the Constitution that it knows nobody as a slave. All are "persons." But at the same time it does not assume to interfere with a well-known State institution by which "persons" are degraded to be property. The condition of the slave is anomalous. He is property by local law; he is a "person" by the Constitution. But nobody questions the existence of Slavery. It is a monstrous *fact*, beyond reach in the States, except through the War Power, and yet none the less a *fact*, which taxation will only recognize, and not sanction. It is an intolerable nuisance intrenched in State lines; but we shall not treat it otherwise than as nuisance, when we tax it. In taxing it we do not assume its rightfulness; we only assume its undeniable existence as a *fact*, and nothing else.

If our tax were an encouragement, it would be clearly immoral. But it is a discouragement. Exemption

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from taxation is encouragement. Taxation is discouragement just in proportion to its extent, until, in the progress of events, it becomes destructive. Regarding the present question in this light, our course is plain. It is not permissible to encourage Slavery, while every principle of economy and every sentiment of justice and humanity urge its discouragement.

But it is said that the Constitution prohibits a capitation tax, "unless in proportion to the census." The tax I propose is not a capitation tax, any more than the tax on auctioneers, or lawyers, or jugglers, or peddlers, or slaughterers of cattle is a capitation tax. According to lexicographers, a capitation tax is a poll tax, a tax on each individual. Now this tax makes no pretension to be a poll tax, or a tax on each individual. It is a tax on a person who claims the service or labor of another for life, proportioned to the extent of his claim. In other words, *it is a tax on a claim of property;* and when I tax this claim, surely I do not recognize its morality, nor do I accord to it any sanction.

If it be said, that at one time I insist the slave shall have all the rights of "persons" under the Constitution, while I now insist that his master shall pay a tax on his claim of property, I reply, that there is no inconsistency, but perfect harmony. By an unquestionable rule of interpretation, applicable to the Constitution, every word must be construed *in favor of Liberty*, so as most to promote Liberty. According to this rule, every presumption is in favor of Liberty. But, while insisting upon every such presumption, it does not follow that the counter claim shall not be taxed. Indeed, the same principle which inclines in favor of the slave

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must incline also to tax the claim of his master, so long as this claim exists in fact. Freedom is to be enlarged in every way possible, whether by encouraging the slave or discouraging the master. Therefore do I say fearlessly, that the slave, whenever he appears within the national jurisdiction or before national tribunals, is entitled to all the rights of "persons"; but the master, who asserts this odious property, cannot claim any immunity for it on this account. The indulgence is all for the slave, and not at all for the master. For the slave Congress must do everything in its power; for the master Congress must have nothing but disapprobation and discouragement.

These are reasons that influence me, and I present them now in order to influence those who hesitate to impose this tax, on the old idea of Roger Sherman, that it will be a recognition of property in man. Of course, where Senators have no such scruple, the argument for this tax is unanswerable.

It is easy to levy.

It is profitable.

And so far as it exerts an influence, it must be a discouragement to an offensive wrong, which is the parent of our present troubles, and the occasion of all this taxation. It would be strange, if Slavery, after causing our national calamity, should escape from all its consequences. It would be strange, if Slavery, which has played the tyrant thus far in our history, should now, like the tyrant, be so far indulged as to escape burdens of all kinds. It shall not be by my vote.

Subsequently Mr. Sumner modified his amendment, by accepting a substitute drawn by Mr. Simmons, of Rhode Island, in behalf of the

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Finance Committee, who suggested, that "the section, as presented by the Senator from Massachusetts, might leave the slave liable to be sold to pay the tax, and that conflicts about as much with the Senator's notions as he could well have drawn any provision to do so." Mr. Sumner had no anxiety on this head, and said at once: —

Perhaps the Senator and myself start from different points. I do not think the United States can own a slave. I cannot doubt, that, if a slave should be seized under process of the United States, he would be taken to Freedom, and not to Slavery, for the simple reason that the nation cannot own a slave. Therefore any special provision for this emergency is superfluous. I rest in the conviction, that, when a slave passes into the hands of the United States, he at once becomes free.

Mr. Sumner added, that the proposition he had presented was "in the plainest form and fewest words," and on this account had merits of its own.

Mr. Collamer hoped Mr. Sumner would accept the substitute, and thought "ten dollars a head on all ages and conditions an unreasonable tax."

The substitute accepted by Mr. Sumner was as follows.

"SEC. — *And be it further enacted*, That an annual tax of five dollars shall be paid by every person or persons, corporation, or society, for and on account of the service or labor of every other person between the ages of ten and sixty-five years, whose service or labor, for a term of years or for life, is claimed to be owned by such first mentioned person or persons, corporation, or society, whether in a fiduciary capacity or otherwise, under and by virtue of the laws or customs of any State; and said annual tax shall be levied and collected of the person or persons, corporation, or society, making such claim, and of their goods, chattels, or lands, as is herein before provided; but in no case shall the person or persons whose service or labor is so claimed, or their service or labor, be sold for the purpose of collecting said tax: *Provided*, That this tax shall not apply to service due to parents." [1]

Mr. Sherman, of Ohio, took the lead in answer to Mr. Sumner, and in opposition to his amendment. After insisting that slaves are "persons," and that, if the amendment be adopted, "they will be the only persons taxed under this bill," he said: —

[1] Congressional Globe, 37th Cong. 2d Sess., p. 2403.

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"If the Senator had made his argument yesterday, when we proposed to tax cotton, a production which goes into manufactures, what he has said would apply with great force. Cotton is a production of slave labor solely. . . . . All his arguments apply to cotton as a subject of taxation; but he convinced a majority of the Senate yesterday that it was not expedient to tax cotton; and now he proposes to tax slaves, and how? . . . . With all our immense resources, we cannot now collect it, except from the loyal people who live in the Border States, who now recognize our flag and are subject to our law. I am not willing to select them as the first to bear a heavy and peculiar taxation. I believe that the true course is to insist upon the tax on cotton."[1]

The special points of Mr. Sherman's opposition appear in Mr. Sumner's reply.

MR. PRESIDENT, — I will make one remark in reply to the Senator from Ohio. He objects to my proposition as in the nature of a direct tax, or poll tax. How is this? Has not the Senator voted to tax auctioneers, lawyers, jugglers, and slaughterers of cattle, all being classes of persons in the community?

MR. SHERMAN. To tax their employments.

MR. SUMNER. And I propose to tax the employment of the slave-master, — that is all. It is the business of the slave-master to make the slave work. This is his high vocation. In other words, his business consists in using the service and labor of another. And to this class of persons he belongs. Is it not plain? Can there be any doubt? Look at it. He is an auctioneer of human rights, a broker of human labor, a juggler of human sufferings and human sympathies, — I might say a slaughterer of human hopes; and, Sir, if the Senator from Ohio can tax auctioneer, broker, juggler, or slaughterer of cattle, I am at a loss to understand why he cannot tax the peculiar form of these vocations all concurring in the slave-master. He is swift

[1] Congressional Globe, 37th Cong. 2d Sess., p. 2402.

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to tax the less, but hesitates to tax the greater. He can tax the petty employment, which is not immoral or cruel; but he will not tax the larger multiform employment, in which immorality and cruelty commingle.

But the Senator says it is a capitation or poll tax. Not, Sir, in the sense of the Constitution. On this I stand. It is simply a tax on a productive claim of property, or, to borrow the language of the Senator a moment ago, on an "employment." It is nothing but that.

The Senator thinks it improper to tax slave-masters, especially when we have cotton for taxation; and he almost chides me, because yesterday I was against the cotton tax, which in his judgment is most proper. Sir, I am at a loss to find the parallel between the two cases implied in supposing that one can be a substitute for the other. They are unlike in every respect. Slaves and cotton belong to the same section of country, precisely as alligators and cotton; and that is all the parallel between them. Cotton is an agricultural product, entering into commerce and manufactures, while the manufactures made from it are important to all classes, but especially the poor. The question of its taxation involves considerations of economy and policy utterly unlike those arising on the motion to tax the claim of the slave-master. It is difficult to see how the two taxes can be confounded. One is a tax on an agricultural product; the other is a tax on an odious claim. The Senator will not say that it is an acceptable claim under the Constitution. Even if there, it is disguised under ambiguous words. Indeed, he knows well that it is offensive and repugnant to the conscience of good people. Shall not such a claim be taxed? Shall such a claim be permitted to go scot-free? Shall

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we run about the country, seeking class after class to visit with oppressive taxation, and, under the lead of the Senator, excuse this largest and most offensive class of all? I am at a loss to understand on what ground of principle the Senator can proceed, when he proposes this special immunity. If I use strong terms in describing slave-masters, it is because the very language of the bill suggests them, and they are in essential conformity with truth.

I believe I have answered the two objections made by the Senator from Ohio. If he made any other, it has escaped my recollection.

Mr. Sherman followed Mr. Sumner, beginning with these words:—

"I will not reply to that part of the speech of the honorable Senator from Massachusetts in which he denounced slaveholders. My opinions on this subject are well known. I think that slaveholders have certain rights under the Constitution of the United States; and while I never could be one myself, and have as deep a repugnance to any law which authorizes the holding of slaves as any other man, yet, while I am here under oath, I will respect their constitutional rights to the fullest extent. We are bound to legislate for them, and they are entitled to the protection of the Constitution of the United States as fully as if they were here, all of them, to speak for themselves; and especially I do not think it proper or courteous to use such language, applied to a whole class of people, when Senators on this floor are with us, associating with us, who are included by the appellation 'slaveholder,' so obnoxious to the Senator from Massachusetts. Certainly I cannot characterize so harshly any one who is a member of the same body with myself." [1]

He then said that he intended "to put the proposition to tax cotton and the proposition to tax slaves against each other," and that he would "propose to amend the amendment of the Senator from Massachusetts by substituting a modified tax on cotton," — that "they are connected together, and the Senator cannot disconnect them." He then spoke of slave-masters again.

"The slaveholders of the Revolution were men of the highest purity, of the greatest patriotism. At that time Slavery was admitted to be an evil. They were men of gentleness, of courtesy, of kindness, good hearts and good

[1] Congressional Globe, 37th Cong. 2d Sess., p. 2408.

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heads, nearly all of them; and so are the great body of the slaveholders with whom you are brought in contact in the Border States, men of gentleness and kindness and courtesy. . . . . Many of the most gentlemanly, courteous, kind, and patriotic men that I ever met in the world were slaveholders; and I think, that, taken as a class, the slaveholders of the Border States are men who are deserving of our commiseration, of our kindness, rather than of our reproaches. . . . . I do not choose to select that class of men from among all the population of the Southern States and tax them, and then to apply to them opprobrious epithets." [1]

M. Sumner felt called to speak again in reply, and said: —

The Senator from Ohio says that I propose a tax on "slaves," and then carefully reminds me that "slaves" are persons, and therefore not, according to the Constitution, to be taxed, except by a capitation tax. Now, Sir, I have to say, in the first place, that the tax which I propose is not to be regarded as a tax on slaves. If applicable to persons, it is to the masters, and not to the slaves. It is a tax on slave-masters, as I have already said, — precisely like the tax on auctioneers, which is sustained by the Senator. It is a tax on a claim of property made by slave-masters. The Senator may call such a claim property or not, as he pleases. It is at least a claim of property, and as such I propose to tax it. Why not? The Senator admits that at other times slaves have been expressly taxed, — actually taxed in name. In the tax of 1815 there was a tax on "land *and slaves*." The Senator does not doubt the constitutionality of such tax. Sir, I am content with this authority, which goes beyond anything that I propose, and I am not troubled by any scruple, lest, in imposing a tax on the claim of the slave-master, I recognize property in man. At most, I recognize a profitable claim, and tax it.

The remarks of the Senator were occupied chiefly

[1] Congressional Globe, 37th Cong 2d Sess., p. 2404.

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with two heads, — first, eulogy of slave-masters, and, secondly, vindication of his proposed tax on cotton. I have little to say of the Senator's eulogy. There are two authorities on that head, which the Senator will pardon me, if I place above him: I mean Mr. Jefferson and Colonel Mason, both of our early Revolutionary days. Mr. Jefferson assures us that the whole commerce between master and slave is one of boisterous passion, tending to barbarism.[1] Colonel Mason exclaimed, in the Convention to frame the Constitution, that every slave-master is born a petty tyrant.[2] And yet, Sir, in the face of this authentic testimony, from persons who knew Slavery and all its influences, the Senator eulogizes slave-masters, and pleads for their exemption from taxation. Eulogy is for the dead. I would not add to the odium justly belonging to a tyrannical class, but I do insist that justice shall be done to their victims; and when the Senator interposes eulogy, I interpose against him the rights which have been violated. So long as men persist in such outrage, so long as they persevere in maintaining an institution which annuls the parental relation, the conjugal relation, the right to instruction, the right to the fruit of one's own labor, and does all this merely to make men work without wages, so long as men support this unjust and irrational pretence, they must not expect soft words from me. If the Senator from Ohio finds it in his generosity to plead for slave-masters, he must excuse me, if I decline to follow him. He does not know them as well as I do, nor does he know their victims as well as I do.

[1] Notes on Virginia, Query XVIII.: Writings, Vol. VIII. p. 403.

[2] Debates in the Federal Convention, August 22, 1787: Madison Papers, Vol. III. p. 1391.

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The Senator dwells much on the importance of a tax on cotton. The subject was fully canvassed yesterday, and the vote of the Senate was against him. He now seeks a re-hearing out of the ordinary course. Would it not be better, if his proposition were postponed to the next stage of the bill, when it will be strictly in order? Meanwhile, in pursuance of my promise to be brief, I content myself with saying, that the desire of the Senate to tax cotton is no reason why they should refuse to tax the claim of the slave-master. The two are not in any way dependent upon each other. Let the Senator from Ohio carry his cotton tax, if the Senate agree with him. But, Sir, I insist, that, whether cotton is taxed or not, the claim of the slave-master shall not be permitted to escape. I do not say the property, but I say the claim. It ought to be taxed, not only for revenue, but also for the discouragement it will fasten upon an odious pretension, which has been to us the fountain of trouble and war.

Mr. Sherman's motion to strike out the tax on slave-masters and insert the tax on cotton was then lost, — Yeas 15, Nays 22.

Mr. Henderson, of Missouri, then moved to amend the amendment of Mr. Sumner by adding, —

"*And provided, further*, That the tax herein prescribed shall not be levied or collected in any State where a system of gradual emancipation may have been adopted at the time of the collection."

May 29th, this was lost, — Yeas 15, Nays 20.

Then, on motion of Mr. Fessenden, Mr. Sumner's amendment was further modified by substituting a tax of "two" dollars, instead of "five," on account of each slave. Before the vote was taken, Mr. Sumner assigned the reason for the higher rate.

THE Senator from Maine [Mr. FESSENDEN] said that he had looked simply at the revenue to be obtained by

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a tax. But, pray, will not a larger revenue be obtained at the rate of five dollars than at the rate of two? There are the slaves, — count them, and tax them. The process is simple, with no chance of evasion. Besides, Sir, I cannot forget, nor can the Senator, that throughout our history we have heard constantly of "incidental protection." But, if incidental protection is just and expedient, then is incidental discouragement, and the tax I propose may be sustained on this ground. We do not hesitate to tax whiskey and tobacco as luxuries, indulgences, vices. Why should we hesitate to tax the worst luxury, the worst indulgence, the worst vice of all, which is Slavery? Therefore, for a double reason, first, for the sake of revenue, and, secondly, for the sake of discouragement to Slavery, I am for the larger tax.

After further debate, the question was taken on the amendment of Mr. Sumner as modified, and resulted, Yeas 14, Nays 22. So the amendment was lost.

June 5th, at the next stage of the bill, Mr. Sumner moved his amendment in the following form: —

"*And be it further enacted*, That every person claiming the service or labor of any other person as a slave shall pay a tax of two dollars on account of every person so claimed: but in no case shall any person so claimed be sold for the purpose of collecting the tax."

The yeas and nays were ordered, and, being taken, resulted, Yeas 19, Nays 16. So the amendment was agreed to.

June 6th, Mr. Anthony, of Rhode Island, who had voted for the tax on slaves, moved a reconsideration, not because he had changed his opinion, but, as he said, at the request of Senators. This was to give an opportunity for another vote.

In the debate which ensued the amendment was assailed by Mr. Doolittle, Mr. Browning, Mr. Cowan, and Mr. Hale. The latter quoted the words, —

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"And if we cannot alter things,
Egad, we 'll change their names, Sir," [1] —

and insisted, that, however it might be called, it was a tax on slaves; on which Mr. Wade remarked from his seat, "So much the better." Mr. Sumner said in reply: —

MR. PRESIDENT, — I presume there is no difference among Senators in desire to follow the Constitution. The Senator from New Hampshire [Mr. HALE], on my right, cannot be more desirous to follow it than the Senator from Pennsylvania [Mr. WILMOT], on my left. In that respect they are equal. Nor do I believe that the Senator from Illinois [Mr. BROWNING], over the way, can claim any particular monopoly of such devotion. In that respect, Sir, we are all equal. Our difference is as to the meaning of the Constitution. But it is a poor argument which finds its chief force in asseverations of devotion to the Constitution. Conscious of my obligation to support it, and of my loyalty, I make no such asseverations.

Nor again, Sir, do I believe that the Senator from New Hampshire can take to himself any monopoly of praise for denying the whole offensive pretension of property in man. Is he more earnest in this denial than many other Senators? Is he more earnest than the Senator from Pennsylvania near me? Is he more earnest than myself? Has he denied it oftener in debate or public speech? To me the pretension is absurd as it is wicked. A man may as well claim property in a star as in his fellow-man. And yet, Sir, with this conviction, I cannot forget that I am here, as a Senator,

[1] These lines, with a slight alteration, are from a parody, "On the Discoveries of Captain Lewis," which appeared anonymously in the *Monthly Anthology* for March, 1807, but attributed to John Quincy Adams. — DUYCKINCK, *Cyclopædia of American Literature*, Vol. I. p. 395.

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to legislate with regard to existing institutions, and to see things as they are. I cannot be blind to the *fact of Slavery*. Slavery exists as a monstrous fact, an enormity, if you please, but still it exists; and as a legislator I am to act on its existence. Am I not right? Can I presume on this occasion to be guided by my inner conviction that there is no property in man, when, looking to the Slave States, I am compelled to see the great, unquestionable fact of pretended property? To my mind, it is more practical to recognize the fact, and to proceed accordingly.

The Senator from Illinois insists that this is a capitation tax, and he reads the text of the Constitution. What is a capitation tax? The precise definition in Webster's Dictionary — if the Senator will excuse me for going to an authority which is not a law book — is "a tax or imposition upon each head or person, a poll tax." Such is the tax with regard to which the provision of the Constitution read by the Senator was adopted. This provision is not applicable to any other tax, but simply to this special tax.

Already I have reminded the Senator that he has voted to tax auctioneers, to tax jugglers, to tax the slaughterers of cattle, and to tax lawyers. I might add other classes. I now propose that he should tax claimants of slaves, a class offensive to reason and humanity. That is all. If you look at the census of 1850, — that of 1860 is not yet published, — you will find among the different classes of our population the following: mariners, 70,000, — I will not give the hundreds; merchants, 100,000; planters, 27,000; wheelwrights, 30,000; teachers, 29,000; tailors, 52,000; overseers, 18,000; lawyers, 23,000; farmers, 2,363,000; slaveholders, 347,000.

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Now, Sir, would any one say that a tax on the business of the mariner was a capitation tax? Would any one say that a tax on the business of merchants, of whom we have one hundred thousand, was a capitation tax? Would any one say that a tax on the business of the planter was a capitation tax? that a tax on the business of the wheelwright was a capitation tax? that a tax on the business of teachers was a capitation tax? that a tax on the business of tailors was a capitation tax? that a tax on the business of overseers of plantations, who apply the lash, of whom there are eighteen thousand, was a capitation tax? that a tax on lawyers, already voted by the Senator from Illinois, was a capitation tax? that a tax on farmers, if you will, of whom, happily, we have two million three hundred and sixty-three thousand, was a capitation tax? And will any one say that a tax on slave-masters, of whom, unhappily, we have three hundred and forty-seven thousand, is a capitation tax? Senators may imagine it a capitation tax, Senators may call it a capitation tax, but no imagination and no energy of assertion can make it so. It is not a capitation tax. It is a tax on the claim of the slave-master in the bones and muscles, the labor and service of his fellow-man, and, so far as the tax can have any influence, it must discredit and discourage such claim. Therefore, Sir, I say confidently that the tax is in every respect constitutional, and it is also a tax well worthy of adoption, because, at a moment when Slavery stands revealed as the very pest of our land, it will operate to discredit and discourage it.

In no other way can you obtain so much revenue so easily and so beneficently. But if you refuse to impose this tax, you concede a special immunity to a most of-

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fensive pretension, and leave those who profit by it to gather their profits without any of that burden so freely imposed upon the honest industry of the country, and upon so many classes of our citizens.

The motion to reconsider was carried, — Yeas 22, Nays 18.

The question then recurred on the amendment, and it was lost, — Yeas 17, Nays 23.

This narrative shows how the effort to tax Slavery finally failed, not on its merits, but from tenderness to slave-masters of the Border States.

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PROPER DESPATCH OF BUSINESS.

REMARKS IN THE SENATE, ON THE ORDER OF BUSINESS, MAY 30, 1862.

IN the pressure of business before the Senate, it was proposed to sit into the night on the Internal Tax Bill. Mr. Sumner spoke against this proposition.

MR. PRESIDENT, — If I recollect aright, the Tax Bill was considered in the House of Representatives more than three weeks, and it is well known that there are rules for the limit of debate in that body which do not prevail in the Senate.

MR. HALE. But which ought to prevail here.

MR. SUMNER. They do not prevail here, and we are to take things as they are. Now, Sir, shall we limit debate? Shall we cut it off more or less? In the absence of rules by which it may be done, we are asked to do it by protracting the daily session into the night, in other words, by night sessions, and so hurrying the bill to a final vote. I do not think this advisable. The matters in question are too important for such summary process. Each day has its debate on questions of detail, which multiply as we proceed; but there are two or three questions of principle not yet considered, though already before us, including that opened yesterday by the Senator from Rhode Island [Mr. ANTHONY], and

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another to be presented by the Senator from California [Mr. McDOUGALL], involving a review of different systems of taxation. Is it supposed that such questions can be properly considered in a single day, or in two days, so that then we shall be ready to vote? To my mind it is not possible.

But if possible, I repeat, it is not advisable, and, believe me, Sir, I say this from no disposition to shirk business or duty here I have not been out of my seat three minutes since this bill was taken up, nor, indeed, have I been out of my seat a half-hour since the session began. Therefore I do not fall under the judgment of the Senator from Maine [Mr. FESSENDEN] with regard to those who prefer that debate should be allowed to proceed, even at the expense of time. I am ready for work; but I think we shall all do best, if this important measure is considered without haste, if not entirely without rest, according to the customary order of business.

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SHUTTING UP OF COLORED SCHOOLS BY THE PROVISIONAL GOVERNMENT OF NORTH CAROLINA.

RESOLUTION AND REMARKS IN THE SENATE, JUNE 2, 1862.

HON. EDWARD STANLY was appointed by the President Provisional Governor of North Carolina, and Andrew Johnson, of Tennessee. The former signalized his arrival at his post by an official movement against schools for colored children, as forbidden by "the laws of the State," meaning the Black Code, before the war.

Mr. Vincent Colyer, who had opened a school for colored children at Newbern, came at once to Washington. Arriving at the close of the day, he reported immediately to Mr. Sumner, who without delay hurried to the Executive Mansion, and, not finding the President there, followed him to the War Department. Mr. Sumner related what had occurred, when the President, with an impatience which Mr. Sumner never encountered from him on any other occasion, exclaimed, "Do you take me for a School-Committee-man?" Mr. Sumner replied promptly: "Not at all; I take you for President of the United States; and I come with a case of wrong, in attending to which your predecessor, George Washington, if alive, might add to his renown." The President changed his tone, and with perfect kindness proceeded to consider the case.

Mr. Sumner lost no time in laying it before the Senate.

June 2d, he offered the following resolution: —

"*Resolved*, That the Secretary of War be requested to communicate to the Senate copies of any commissions or orders from his Department undertaking to appoint Provisional Governors in Tennessee and North Carolina, with the instructions given to the Governors."

By unanimous consent, the Senate proceeded to consider the resolution, when Mr. Sumner said: —

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MR. PRESIDENT, — I shall not stop to consider any question touching the power to appoint Governors of States. My object is different. It is to expose a case of peculiar interest and importance, with regard to which I have a statement worthy of confidence. From this it appears that one of the first acts of Mr. Stanly, on arrival at Newbern, North Carolina, and assuming his responsible duties as Provisional Governor, was to announce that the school there for the education of colored children, recently opened by Northern charity, must be closed, being forbidden by the laws of North Carolina, which he was instructed by the authorities at Washington to maintain. I have here an official report of this extraordinary transaction.

"In a conversation between Governor Stanly and Mr. Colyer, the Governor stated that there was one thing in Mr. C.'s doings, as superintendent of the poor, a question would be raised about, — indeed, it had been already, — and that was his (C.'s) keeping school for the blacks. 'Of course you are aware,' said the Governor, 'that the laws of the State make the opening of such schools a criminal offence. My instructions from Washington were, that I was to carry out the laws of North Carolina precisely as they were administered before the breaking out of this unhappy affair; so, if I were called upon for a decision in the matter of your schools for the blacks, I would have to decide against you; but at the same time I don't want anything done abruptly. As a man, I might do, perhaps, as you have done; but as a Governor, I must act in my official capacity according to my instructions, and administer the laws as I find them.'

"A true copy.

"C. H. MENDELL,
Clerk to Mr. Colyer.

"NEWBERN, May 28, 1862."

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Then follows a further statement.

"Mr. C. C. Leigh, who was with General Saxton in the Oriental, on his way to South Carolina, as confidential agent of the National Freedmen's Relief Association, and who has just returned, asked Mr. Colyer what he should do. Mr. C. replied: 'I must close the schools, as I cannot consent to continue to place myself in a situation where I am liable to be punished according to the laws of North Carolina.'

"Mr. Leigh is the Chairman of our Home Committee."

If any person, in the name of the United States, has undertaken to close a school for little children, whether white or black, it is important that we should know the authority under which he assumes to act. Surely nobody here will be willing to take the responsibility for such an act. It is difficult to conceive that one of the first fruits of national victory and the reëstablishment of national power should be an enormity not easy to characterize in any terms of moderation. Jefferson tells us that in a certain contest there is no attribute of the Almighty "which can take side with us."[1] And permit me to say, that, if, in the war unhappily existing, the military power of the United States is employed in closing schools, there is no attribute of the Almighty which must not be against us; nor can we expect any true success. Sir, in the name of the Constitution, of humanity, and of common sense, I protest against such impiety under sanction of the United States.

The proper rule of conduct is simple. It is found in the instructions, to which I referred the other day, from the British Commissioner in a conquered province of India. After indicating certain crimes to be treated

[1] Notes on Virginia, Query XVIII.: Writings, Vol. VIII. p 404.

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with summary punishment, he proceeds to say: "All other crimes you will investigate according to the forms of justice usual in the country, modified as you may think expedient; and in all cases you will endeavor to enforce the existing laws and customs, *unless where they are clearly repugnant to reason and natural equity.*"[1] Here is the proper limitation. Anything else is unworthy of a civilized country. Whatever is clearly repugnant to reason and equity must be rejected. Surely such a thing cannot be enforced. But what can be more clearly repugnant to reason and equity than the barbarous law which an officer, in the name of the National Government, has threatened to enforce?

The resolution was agreed to.

June 4th, a report from the Secretary of War, in answer to this resolution, contained a letter of appointment, dated May 19, 1862, conferring "all and singular the powers, duties, and functions pertaining to the office of Military Governor, including the power to establish all necessary offices and tribunals, and suspend the writ of *Habeas Corpus*." This was followed, May 20th, by instructions, wherein it is said: "Upon your wisdom and energetic action much will depend. . . . . It is not deemed necessary to give any specific instruction, but rather to confide in your sound discretion to adopt such measures as circumstances may demand. Specific instructions will be given, when requested. You may rely upon the perfect confidence and full support of the Department in the performance of your duties."[2]

[1] Elphinstone *v.* Bedreechund, 1 Knapp's Privy Council Rep., 320. See, *ante*, p. 51.

[2] Executive Documents, 37th Cong. 2d Sess., Senate, Vol. V. No. 54.

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STAND BY THE ADMINISTRATION.

LETTER TO ———, JUNE 5, 1862.

THIS letter, after enjoying an extensive circulation in the newspapers, was preserved as a political document in McPherson's "Political History of the Rebellion."[1]

It first appeared in the *Boston Journal*,[2] with the caption, "Senator Sumner and the President," and with these introductory words: —

"We are permitted to publish the following private letter from Hon. Charles Sumner, in reply to a letter addressed to him by a personal friend. Senator Sumner's hearty indorsement will not be without its influence upon those who are impatient at what they term the Proslavery policy of the President. At the same time there is nothing in this indorsement which should shake the confidence of conservative men in his wisdom and prudence. . . . . It is something to obtain from one who may be regarded as a representative of this class so handsome a tribute to the purity of the President's motives, and so hearty an indorsement of the correctness of his convictions and sympathies."

SENATE CHAMBER, June 5, 1862.

MY DEAR SIR, — Your criticism of the President is hasty. I am confident, if you knew him as I do, you would not make it.

The President cannot be held responsible for the misfeasance of subordinates, unless adopted, or at least tolerated, by him. And I am sure nothing unjust or ungenerous will be tolerated, much less adopted, by him.

I am happy to let you know that he has no sympathy with Stanly in his absurd wickedness, closing the

[1] Page 233. [2] June 13, 1862.

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schools, nor, again, in his other act of turning our camps into a hunting-ground for slaves. He repudiates both, positively. The latter point has occupied much of his thought, and the newspapers do not go too far in recording his repeated declarations, which I have often heard from his own lips, that slaves finding their way within the national lines are never to be reënslaved. This is his conviction, expressed without reserve.

Could you — as has been my privilege often — have seen the President, while considering the great questions on which he has already acted, beginning with the invitation to Emancipation in the States, then Emancipation in the District of Columbia, and the acknowledgment of the Independence of Hayti and Liberia, even your zeal would be satisfied; for you would feel the sincerity of his purpose to do what he can to carry forward the principles of the Declaration of Independence. His whole soul was occupied, especially by the first proposition, so peculiarly his own. In familiar intercourse with him, I remember nothing more touching than the earnestness and completeness with which he embraced this idea. To his mind it was just and beneficent, while it promised the sure end of Slavery. To me, who had already proposed a Bridge of Gold for the retreating Fiend, it was most welcome. Proceeding from the President, it must take its place among the great events of history.

If disposed to be impatient at apparent short-comings, think, I pray you, what has been done in a brief period, and from the past discern the sure promise of the future. Knowing something of my convictions, and of the ardor with which I maintain them, you may, perhaps, derive assurance from my confidence. I say to

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you, therefore, Stand by the Administration. If need be, help it by word and act; but stand by it, and have faith in it.

I wish that you knew the President, and had heard the artless expression of his convictions on those questions which concern you so deeply. You might, perhaps, wish he were less cautious, but you would be grateful that he is so true to all you have at heart. Believe me, therefore, you are wrong; and I regret it the more because of my desire to see all our friends stand firm together.

If I write strongly, it is because I feel strongly; for my constant and intimate intercourse with the President, beginning with the fourth of March, not only binds me peculiarly to his Administration, but gives me a personal as well as a political interest in seeing that justice is done him.

Believe me, my dear Sir,
With much regard,
Ever faithfully yours,

CHARLES SUMNER.

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POWER OF CONGRESS *vs.* MILITARY GOVERNMENT OF STATES.

RESOLUTIONS IN THE SENATE, JUNE 6, 1862.

FURTHER report from North Carolina induced Mr. Sumner again to bring the action of Mr. Stanly before the Senate, in the hope especially of reaching the country, and also the Administration.

WHEREAS Edward Stanly, assuming to act under a letter from the Secretary of War, calling him Military Governor of North Carolina, a post unknown to the Constitution and laws of the Union, has undertaken, by virtue of such military authority, to surrender fugitive slaves, contrary to the intent and meaning of an Act of Congress recently adopted; also to banish an American citizen, in violation of personal rights secured by the Constitution; and also to close and suppress schools maintained by the charity of good men for the education of colored children, in defiance of every principle of morals and religion, and to the discredit of our national character: Therefore, —

1. *Resolved*, That the President of the United States be requested to cancel the letter of the Secretary of War under which Edward Stanly now assumes to act.

2. *Resolved*, That any such letter, assuming to create any person Military Governor of a State, is without sanction in the Constitution and laws, and that its ef-

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fect is to subordinate the civil to the military authority, contrary to the spirit of our institutions, and in derogation of the powers of Congress, which, where a State Government falls into the hands of traitors, can be the only legitimate authority, except martial law.

Mr. Carlile, of West Virginia, objected to the consideration of the resolutions, and they were postponed.

These resolutions presented again the question of the Power of Congress over the Rebel States, first opened by the resolutions of February, 11, 1862.[1]

[1] *Ante*, Vol. VI. pp. 301 - 305.

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AIR-LINE RAILROAD BETWEEN WASHINGTON AND NEW YORK.

RESOLUTION IN THE SENATE, JUNE 9, 1862.

RESOLVED, That the Committee on Post-Offices and Post-Roads be directed to consider the expediency of providing for an air-line railroad between Washington and New York, which shall carry the mails of the United States, and be free from all local impediments.

This resolution was objected to, and so was postponed; but its immediate object was accomplished. The existing roads were stimulated, and the attention of the country was called to the idea of better communication between the two capitals of politics and commerce. A French paper spoke of the proposed road as "*atmospheric.*"

The resolution was renewed at the next session of Congress, December 5, 1862, when it was agreed to.

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ABOLITION AND PROHIBITION OF SLAVERY IN WEST VIRGINIA.

REMARKS IN THE SENATE, ON THE BILL FOR THE ADMISSION OF WEST VIRGINIA AS A STATE, JUNE 26, JULY 1 AND 14, 1862.

THE facts essential to the comprehension of this case appear in the debate.

MR. PRESIDENT, — The question is on the admission of West Virginia into the Union as a new State, and the following is one of the conditions, namely: "That from and after the fourth day of July, 1863, the children of all slaves born within the limits of said State shall be free." Here is a condition which you undertake to impose. This is clear.

But, Sir, be good enough to observe that this condition recognizes Slavery during the present generation. Short as life may be, it is too long for Slavery. If it be adopted, and the bill becomes a law, a new Slave State will take its place in our Union, — it may be with but few slaves, and for the present generation only, but nevertheless a new Slave State. That, Sir, is too much.

How often have I said, and how painful that I must now repeat what all know, that it takes but little Slavery to make a Slave State with all the virus of Slavery! Now my vote shall help no new State to take a place in this Union, with Senators in this body, unless purged of this poison. Enough has our nation been disturbed,

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and enough has the Constitution been perverted. The time has come for the remedy. It is found in the policy of Thomas Jefferson, originally applied to the great Territory of the Northwest. Its application to a portion of his own Virginia, seeking to become a new State, will be politic, just, and conservative.

Mr. Sumner concluded by moving to strike out the words of the condition proposed, and insert an absolute abolition and prohibition, so that it should read, "From and after the fourth day of July, 1863, within the limits of the State there shall be neither slavery nor involuntary servitude, otherwise than in the punishment of crime whereof the party shall be duly convicted."

July 1st, the Senate proceeded to the consideration of the bill, the pending question being the amendment of Mr. Sumner, who made the following remarks.

TIME has elapsed since this measure was before the Senate, which meanwhile has been engaged in an important debate. Therefore I shall be pardoned, if, at the expense of repetition, I recall attention to the precise question.

The bill for the admission of West Virginia provides that from and after the 4th of July, 1863, all children born of slaves shall be free, leaving the existing generation in Slavery. From statistics furnished by the honorable Senator from Virginia [Mr. WILLEY], in his elaborate speech, it appears that in West Virginia twelve thousand human beings are held in Slavery.

MR. WILLEY. That was in 1860; but it is not so now.

MR. SUMNER. There may be fewer now: call the number ten thousand. There are ten thousand slaves there, who, according to the bill, are to remain in bondage during life. Thus, for one whole generation, shall

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we be afflicted by another Slave State, with two slaveholding representatives in this body.

I mean to speak of this question with all possible respect for Senators on the other side. I am anxious not to introduce any topic otherwise than agreeable; but I must discharge my duty here. I cannot by my vote consent that there shall be two additional slaveholding Senators for another generation. I content myself with this declaration, without argument, — except what is found in a brief passage by Mr. Webster in this body. I refer to his speech of the 22d of December, 1845, on the admission of Texas, where he used this language: —

"In the next place, Sir, I have to say, that, while I hold, with as much integrity, I trust, and faithfulness, as any citizen of this country, to all the original arrangements and compromises under which the Constitution under which we now live was adopted, I never could, and never can, persuade myself to be in favor of the admission of other States into the Union as Slave States, with the inequalities which were allowed and accorded by the Constitution to the slaveholding States then in existence. I do not think that the Free States ever expected, or could expect, that they would be called on to admit more Slave States, having the unequal advantages arising to them from the mode of apportioning representation under the existing Constitution. . . . .

"It will always be a question, whether the other States have not a right (and I think they have the clearest right) to require that the State coming into the Union should come in upon an equality; and if the existence of Slavery be an impediment to coming in on an equality, then the State proposing to come in should be required to remove that inequality by abolishing Slavery, or take the alternative of being excluded." [1]

[1] Works, Vol. V. pp. 56, 57.

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Afterwards, in his famous speech of the 7th of March, 1850, he reaffirmed these principles.

"It has happened that between 1837 and this time, on various occasions, I have expressed my entire opposition to the admission of Slave States, or the acquisition of new Slave Territories, to be added to the United States. I know, Sir, no change in my own sentiments or my own purposes in that respect."[1]

I might quote more, but this is sufficient. Mr. Webster was against new Slave States.

I adduce these words as stating strongly at least one important ground of objection. The admission of West Virginia with a condition recognizing Slavery for a full generation will be an extension of the Slave Power and a new sanction of Slavery. I cannot consent to it, Sir; nor do I see any apology for hesitation. Our control of this matter is clear beyond reasonable doubt, and the present state of our country supplies a new motive for its exercise.

In the debate that ensued, Mr. Hale criticized Mr. Sumner, quoting the story of Abraham and his aged idolatrous guest, as given by Dr. Franklin.

"'And God said to Abraham, Have I borne with you [him] these fourscore years, and canst thou not bear with him one night, who art thyself a sinner?' Sir, in exactly the spirit inculcated by that fable I would deal with Slavery; and I would listen to-day as it were to the voice of God, who asks us, Have I borne with this thing so many generations, and cannot you bear with it dying, when it begins on the next Fourth of July?"[2]

[1] Works, Vol. V. pp. 348, 349.

[2] Congressional Globe, 37th Cong. 2d Sess., July 1, 1862, p. 3085. Mr. Hale quotes from memory. The passage in the original, entitled "A Parable against Persecution," is as follows: "And God said, Have I borne with him these hundred ninety and eight years, and nourished him, and clothed him, notwithstanding his rebellion against me, and couldst not thou, that art thyself a sinner, bear with him one night?" — Franklin's Works, ed. Sparks, Vol. II. p. 122.

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Mr. Wade, in the same spirit, said: —

"My friend from Massachusetts, by his proposition, strikes this institution down at one dash. I should like to see it go; but I must look a little to see what its effect will be, after all." [1]

Before the vote was taken, Mr. Carlile, of Virginia, remarked: —

"Mr. President, it is my sincere belief that this disposition to interfere with the rights of the States, exhibited by this Congress, has prolonged the war, — that, if persisted in, the war becomes a war of indefinite duration, and that the Constitutional Union our fathers formed will be lost to us and our posterity forever." [2]

July 14th, the question was taken on Mr. Sumner's amendment, which was rejected, — Yeas 11, Nays 24.

Mr. Lane, of Kansas, moved that all slaves in the State, July 4, 1863, and under the age of ten, shall be free when they arrive at the age of twenty-one, and all slaves over ten and under twenty-one shall be free when they arrive at the age of twenty-five; and the amendment was adopted, — Yeas 25, Nays 12.

The question then occurred on the passage of the bill, when Mr. Sumner remarked: —

I RENOUNCE the intention of presenting again the amendment you have already voted down; but it is none the less important in my judgment. I do not like to occupy the time of the Senate; but I cannot doubt that you have acted on the amendment hastily, and without full consideration. Why, Sir, it is simply the old Jeffersonian ordinance, which, when originally adopted for the great Territory of the Northwest, operated upon Slavery already there, and absolutely forbade this wrong from that time forward. In point of fact, slaves were freed by this ordinance.

I thought it well that this institute of Virginia's son should help to redeem Virginia. It has been voted

[1] Congressional Globe, 37th Cong. 2d Sess., July 1, 1862, p. 3038.
[2] Ibid., July 14, p. 3314.

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down; and now the question is presented, whether the Senate will recognize a new Slave State. True, Slavery will be for a short term only, for twenty-one years, if you please, but that is a long time for Slavery. I cannot consent to admit a new State with such a curse for twenty-one years. How little slavery it takes to make a Slave State is illustrated by Delaware, with less than eighteen hundred slaves, sending two Senators of Slavery to this Chamber. Shall we welcome two more from a State newly created by ourselves? Never, Sir, by my vote; and as the Senate sees fit to discard the effort I have made, I deem it my duty to vote against the bill.

The bill was passed, — Yeas 23, Nays 17, — Mr. Sumner voting in the negative.

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WAR POWERS OF CONGRESS: CONFISCATION AND LIBERATION.

SPEECH IN THE SENATE, ON THE HOUSE BILL FOR THE CONFISCATION OF PROPERTY AND THE LIBERATION OF SLAVES BELONGING TO REBELS, JUNE 27, 1862.

THIS speech is a supplement to that of May 19th, on the "Rights of Sovereignty and Rights of War." Its occasion is explained in the Introduction to the latter speech.[1]

The New York *Independent* published it at length, and thus characterized it: —

"It is the most complete presentation of the question that can be found within the same compass, and, like all Mr. Sumner's speeches, is distinguished for accuracy of statement, learning, and sound principle. It is a defence of the present position of our Government, as defined by Act of Congress, to which every citizen owes obedience. In efficacy, that Act will go with our armies, as they advance, and will clear up the perplexities of our Generals, and clear their minds of certain political superstitions by which they have been hampered and hindered, to the great injury of our military operations. Let the people of Massachusetts, in particular, exult, as they observe, in regard to this, as well as most other leading measures of Congress, how the views of their great Senator became, step by step, the recognized and settled policy of the Government; and let them thank God that the good old Bay State has such a representative, and furnishes such a leader in this great extremity."

MR. PRESIDENT, — Too tardily the house of a Rebel General in Virginia[2] has been taken by the Government, and set apart as a military hospital for the reception of our soldiers, wounded and maimed in battle. At least three churches here in Washing-

[1] *Ante*, p. 5.

[2] Arlington, the property of General Lee.

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ton have been seized and occupied for the same purpose. All applaud these acts, which make the house more historic and the churches more sacred than ever before. But pray, Sir, under what authority is all this? Not according to any contract or agreement; not according to any "due process of law"; not even according to any statute. And yet the language of the Constitution is positive: "No soldier shall in time of peace be quartered *in any house*, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law." If it be time of peace now, then is the Constitution violated by quartering soldiers in these houses without the consent of the owner. If it be time of war now, then is the Constitution violated by quartering these soldiers in a manner not prescribed by law, — unless we are ready to admit that the provisions of the Constitution are entirely inapplicable to what is done under the military requirements of self-defence, which is a supreme law, above all other laws or constitutions devised by men. But if the Constitution, in a case where it is singularly explicit, can be disregarded without question in the exercise of the Rights of War, it is vain to invoke its provisions in other cases, where it is less explicit, in restraint of the Rights of War.

It is true that the Constitution ambiguously provides against certain forfeitures, as incident to an "attainder of treason"; it also positively prohibits "*ex post facto* laws"; and it nobly declares that "no person shall be deprived of life, liberty, or property, without due process of law." But nothing in the House bills for the confiscation of property or the liberation of slaves is obnoxious to either of these provisions. There is no

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attainder of treason, no *ex post facto* law, and no taking of property without due process of law; for the judicial proceedings which these bills institute are competent for the purpose. The House bills are not criminal statutes, nor do they institute criminal proceedings. Therefore do I assert unhesitatingly that these bills are above constitutional objection. They are as constitutional as the Constitution itself. It was once said of a subtile spirit of criticism, that it would find a heresy in the Lord's Prayer; and such a spirit, permit me to say, is needed to find anything unconstitutional in these bills.

Here I assume, as a cardinal principle of Constitutional Law, that, whatever may be the condition of slaves in the States and under State laws, they are, under the Constitution of the United States, *persons*, and not property; so that, in declaring their emancipation, Congress is not constrained by any constitutional requirements with regard to property. Whatever the claims of property, slaves are men; and I but repeat an unquestionable truth of morals, confirmed by the Declaration of Independence, when I say that there can be no property in men. Mr. Winter Davis,[1] of Baltimore, has reminded the country, that Congress, on the motion of Mr. Clay, once undertook to declare the freedom of slaves without any "due process of law"; and the present Congress, by a bill of the last session, setting free slaves actually employed in the Rebellion,[2] has done the same thing; so that the principle is completely established.

[1] Hon. Henry Winter Davis, late Representative in Congress from Maryland.

[2] Acts of 37th Cong. 1st Sess., Ch. LX. sec. 4: Statutes at Large, Vol. XII. p. 319.

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Even if the bills seemed obnoxious to certain constitutional provisions, — as they clearly are not, — this objection and every other objection will disappear, when it is understood that they are *war measures*, derived from the capacious War Powers of Congress, applicable only to public enemies, and limited in duration to the war. Considered in these aspects and with these qualifications, these bills are only an agency in the prosecution of the war, and the power to enact them is as clear as the power to raise armies or to levy taxes. An ancient historian, in words adopted by the greatest modern publicist, has told us that "war has its laws, no less than peace."[1] These words are placed by Grotius at the head of his great work, and they embody a fundamental principle. The Rights of War are not less peculiar than the victories of war, which are so widely different from the victories of peace.

Pray, Sir, where in the Constitution is any limitation of the War Powers? Let Senators who would limit them mention a single section, line, or phrase, which even hints at any limitation. If it be constitutional to make war, to set armies in the field, to launch navies, to occupy fields and houses, to bombard cities, to kill in battle, — all without trial by jury, or any process of law, or judicial proceeding of any kind, — it is equally constitutional, as a war measure, to confiscate the property of the enemy and to liberate his slaves. Nor can it be doubted on principle, that, if the latter be unconstitutional, then are all other acts of war unconstitutional. You may condemn confiscation and liberation as impolitic, but you cannot condemn them

[1] "Sunt et belli, sicut pacis, jura." — Livy, Lib. V. c. 27: quoted by Grotius, De Jure Belli ac Pacis, Prolegom. § 26.

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as unconstitutional, unless, in the same breath, you condemn all other agencies of war, and resolve our present proceeding into the process of a criminal court, guarded at each step by the technicalities of the Common Law.

Sir, I speak frankly, according to my convictions, claiming nothing for myself which I do not freely accord to others. In this discussion there is no need of sharp words or of personal allusions; nor can anything be gained by misstatement of the position of another. It is easy to say that Senators who insist upon the War Powers of Congress are indifferent to the Constitution; but I do not admit that any Senator is more anxious for the Constitution than myself. The War Powers are derived from the Constitution, but, when once set in motion, are without any restraint from the Constitution; so that what is done in pursuance of them is at the same time *under* the Constitution and *outside* the Constitution. It is under the Constitution in its beginning and origin; it is outside the Constitution in the latitude with which it is conducted; but, whether under the Constitution or outside the Constitution, all that is done in pursuance of the War Powers is constitutional. It is easy to cry out against it; it is easy, by misapplication of the Constitution, to call it in question; but it is only by such misapplication, or by senseless cry, that its complete constitutionality can for a moment be drawn into doubt.

The language of the Constitution is plain and ample. It confers upon Congress all the specific powers incident to war, and then further authorizes it "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Here are the precise words: —

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"The Congress shall have power .... to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies; .... to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; .... *to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution* in the Government of the United States, or in any department *or officer thereof*."

Can language be clearer? Other parts of the Constitution may be open to question; but here is no room for question. The text is full and unequivocal. The powers are enumerated. Without stopping to consider them in detail, it will be seen that the most important are exclusively incident to a state of war, and not to a state of peace. A declaration of war is of course war, and "all laws necessary and proper for carrying into execution" this declaration are called into being by the war. Rules concerning captures on land and water are from necessity dormant, till aroused by war; but when aroused, they are, like other War Powers, without check from those constitutional provisions which, just so long as peace prevails, are the boast of the citizen.

The War Powers conferred upon Congress by the Constitution were well known; they had been conferred upon Congress by the earlier Articles of Confederation. The language of the latter was full and explicit with regard to captures.

"The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, ... of establishing rules for deciding in

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all cases *what captures on land or water shall be legal*, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated, ... and establishing courts for receiving and determining finally *appeals in all cases of captures*." [1]

The language subsequently employed in the Constitution is identical in substance. It is evident that the framers of the Constitution had the Articles of Confederation in mind, when they vested in Congress power to "make rules concerning captures on land and water."

The bills now under consideration are obviously founded on the War Powers. The first section of the first bill begins as follows.

"That all the estate and property, money, stocks, credits, and effects of the persons hereafter named in this section are hereby forfeited to the Government of the United States, *and are declared lawful subjects of seizure, and of prize and capture, wherever found, for the indemnity of the United States against the expenses of suppressing the present Rebellion.*"

The Senator must be very hardy who denies the power of Congress, in the exercise of belligerent rights, to pass such a bill; and he must be equally hardy, when he insists that belligerent rights are impaired by any limitations of the Constitution.

If the enemies against whom we now wage war were not our own fellow-citizens, if they were aliens unhappily fastened for the time on our territory, there would be no fine-spun question of constitutional immunity. Such immunities are essentially municipal in character; but a public enemy can claim nothing merely municipal. The immunities he enjoys are such only as are conceded by the Rights of War, — nor more, nor

[1] Art. IX.

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less. As a public enemy, he seeks to subvert our Government, its laws and its Constitution; and in this warfare he proceeds according to the Rights of War, indifferent to any mere local law. But if the war on our part were in accordance with mere local law, and in subordination to provisions of the Constitution devised for peace, it is evident that the National Government would be unable to cope with its enemy. It would enter into battle with hands tied behind the back. Of course, in warfare with people of another country Senators would not require any such self-sacrifice.

But the Rights of War are fixed, whether against alien enemies or against enemies whose hostility is aggravated by the guilt of rebellion, with this single difference, that against rebel enemies these rights would seem to be more complete and unsparing. Show me any Right of War which may be employed against alien enemies, and now, in the name of the Constitution, I insist upon its employment against rebels arrayed as enemies. Because enemies are also rebels, they are not on this account any the less enemies. Because rebels are also enemies, they are not on this account any the less rebels. The double character which they bear increases their liabilities, subjecting them to all the penalties of war enhanced by those personal responsibilities which every partaker in rebellion necessarily assumes.

And yet, Sir, the Constitution is cited as a limitation upon these rights. As well cite the Constitution on the field of battle to check the bayonet charge of our armies, or at the bombardment of a fortress to stay the fiery rain of shells; or, to adopt the examples with which I began, as well cite the Constitution to prevent the occupation of churches here in Washington as hospitals for

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our soldiers, or to save the house of General Lee in Virginia from similar dedication. The Constitution is entirely inapplicable. Sacred and inviolable, the Constitution is made for friends who acknowledge it, and not for enemies who disavow it; and it is made for a state of peace, and not for the fearful exigencies of war, treading down within its sphere all rights except the Rights of War. Born of violence, and looking to violence for victory, war discards all limitations except such as are supplied by the Rights of War. Once begun, war is a law unto itself, — or, in other words, it has a law of its own, which is part of itself. And just in proportion as you seek to moderate it by constitutional limitations do you take from war something of its efficiency. In vain do you equip our soldiers with the best of weapons, or send into the field the most powerful batteries, the latest invention of consummate science, if you direct them all in full career to stand still for an indictment, or other "due process of law," or, at least, for the reading of the Riot Act. Undertaking to limit the Rights of War by the Constitution, where are you to stop? If the Constitution can interfere with one, it can interfere with all. If the Constitution can wrest from Government the weapons of confiscation and liberation, there is no other weapon in the whole arsenal of war which it may not take also.

Sir, the Constitution is guilty of no such absurdity. It was made by practical men, familiar with public law, who, seeing clearly the difference between peace and war, established powers accordingly. While circumscribing the Peace Powers with constitutional checks, they left untouched the War Powers. They declared, that, in the administration of the Peace Powers, all

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should be able to invoke the Constitution as a constant safeguard. But in bestowing upon the Government War Powers without limitation, they embodied in the Constitution all the Rights of War as completely as if those rights had been severally set down and enumerated; and among the first of these is the right to disregard the Rights of Peace. In saying this I fail in no sympathy with peace, which I seek and reverence always, but simply exhibit war in some of its essential conditions. Sir, an alien enemy is not admitted even to sue in your courts.

There is a saying of Antiquity, already quoted in this debate, *Silent leges inter arma*,—"The laws are silent in the midst of arms."[1] Handed down from distant ages, and repeated by successive generations, this saying may be accepted as the embodied result and very essence of human experience. Had it not been true, it would have been forgotten, or at least ceased to be repeated. But it declares a truth to which every war practically testifies, while it is founded in reason and the nature of things, confirmed by centuries as attesting witnesses. The Constitution itself is only a human law; nor can it claim to speak in time of war, and within the sphere of war, more than any other human law.

How vain, then, to adduce against confiscation and liberation, as war measures, an objection derived from the Constitution! and how vain, also, to offer a penal statute, under the Peace Powers of the Constitution, as a war measure! War is war. Better arrest it at once, if it is to be war on the one side and peace on the other, — if our enemies are to employ against us all the Rights of War, while we employ against them only the Rights

[1] Cicero, Orat. pro Milone, Cap. iv. § 10.

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of Peace. Penal statutes are good for peace, when laws prevail; but in the midst of war, and against enemies, when laws are proverbially silent, they are absurd. What enemy now arrayed in arms can be indicted, or, if indicted, convicted, under the most stringent of penal statutes? Not Jefferson Davis himself. Why, then, painfully construct legislative verbiage? Why new penalties for treason, which, from the nature of the case, cannot be enforced in this hour of need? Why not see things as they are, and do what the moment requires? The War Powers of Congress are ample; but in time of war a mere penal statute against a public enemy is not so much as a pop-gun.

There are Senators who claim these vast War Powers for the President, and deny them to Congress. The President, it is said, as commander-in-chief, may seize, confiscate, and liberate under the Rights of War, but Congress cannot direct these things to be done. Pray, Sir, where is the limitation upon Congress? Read the text of the Constitution, and you will find its powers vast as all the requirements of war. There is nothing that may be done anywhere under the Rights of War, which may not be done by Congress. I do not mean to question the powers of the President in his sphere, or of any military commander within his department; but I claim for Congress all that belongs to any Government in the exercise of the Rights of War. And when I speak of Congress, let it be understood that I mean *an Act of Congress*, passed, according to the requirements of the Constitution, by both Houses, and approved by the President. It seems strange to claim for the President alone, in the exercise of his single will,

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War Powers alleged to be denied to the President in association with Congress. If he can wield these powers alone, surely he can wield them in association with Congress; nor will their efficacy be impaired, when it is known that they proceed from this associate will, rather than from his single will alone. The Government of the United States appears most completely in an Act of Congress. Therefore war is declared, armies are raised, rules concerning captures are made, and all articles of war regulating the conduct of war are established by Act of Congress. It is by Act of Congress that the War Powers are all put in motion. When once put in motion, the President must execute them. But he is only the instrument of Congress, under the Constitution.

It is true, the President is commander-in-chief; but it is for Congress to make all laws necessary and proper for carrying into execution his powers, so that, according to the very words of the Constitution, his powers depend upon Congress, which may limit or enlarge them at its own pleasure. Thus, whether you regard Congress or regard the President, you will find that Congress is the arbiter and regulator of the War Powers.

Of the pretension that all these enormous powers belong to the President, and not to Congress, I try to speak calmly and within bounds. I mean always to be parliamentary. But a pretension so irrational and unconstitutional, so absurd and tyrannical, is not entitled to respect. The Senator from Ohio [Mr. WADE], in indignant words worthy of the Senate, has branded it as slavish, and handed it over to judgment. Born in ignorance, and pernicious in consequences, it ought to be received most sternly, and, just in proportion as it obtains ac-

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ceptance, with execration. Such a pretension would change the National Government from a government of law to that of a military dictator. It would degrade our proud Constitutional Republic, where each department has its appointed place, to one of those short-lived, vulgar despotisms appearing occasionally as a warning to mankind. That this pretension should be put forward in the name of the Constitution is only another illustration of the effrontery with which the Constitution is made responsible for the ignorance, the conceit, and the passions of men. Sir, in the name of the Constitution, which I have sworn to support, and which, according to my ability, I mean to maintain, I protest against this new-fangled effort to foist into it a pretension abhorrent to liberty, reason, and common sense.

At the risk of repetition, but for the sake of clearness, I repeat the propositions on which I confidently rest.

1. Rights of Sovereignty are derived from the Constitution, and can be exercised only in conformity with the requirements of the Constitution; so that all penal statutes punishing treason must carefully comply with these requirements. This is the case of the bill introduced by the Senator from New Hampshire [Mr. CLARK].

2. Rights of War are under the Constitution in their origin, but outside the Constitution in their execution. In other words, the Constitution confers Rights of War, but sets no limits to them; so that statutes to enforce them are not mere penal statutes, restricted by the Constitution. But these rights belong to a state of war, and necessarily cease with the war. This is the case of the House bill under discussion.

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3. All rebels are criminals, liable to punishment according to penal statutes; and in all proceedings against them, as such, they are surrounded by the safeguards of the Constitution.

4. Rebels in arms are public enemies, who can claim no safeguard from the Constitution; and they may be pursued and conquered according to the Rights of War.

5. Rights of War may be enforced by Act of Congress, which is the highest form of the national will.

If these conclusions needed the support of authority, they would find it in John Quincy Adams. His words have been often quoted, without perhaps fully considering the great weight to which they are entitled. At an early day, when Minister at London, while Slavery prevailed in the Government, in the discharge of official duties, under instructions from the President, he claimed compensation for slaves liberated by the British armies, arguing against any such liberation under the Rights of War. In conversation with the British Prime-Minister, as reported by himself, after saying that proclamations inviting slaves to desert from their masters had been issued by British officers, he added: "*We* considered them as deviations from the usages of war."[1] Afterwards, as Secretary of State under Mr. Monroe, of Virginia, he made a similar statement.[2] A full knowledge of his convictions on this occasion might, perhaps, disclose the repugnance, or, to borrow his own words on

[1] Letter to the Secretary of State, August 22, 1815: American State Papers, Foreign Relations, Vol. IV. p. 117.

[2] Quoting it in reply to "the authority that has been rung in our ears by the Senator of Massachusetts," Mr. Powell, of Kentucky, said: "This was the utterance of Mr. Adams, before he was fired with that fanatical zeal, before he had that disease of negrophobia, that for a time dethroned his mighty intellect on that subject." — Congressional Globe, 37th Cong. 2d Sess., July 15, 1862, p. 3349.

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another occasion, "the bitterness of soul," with which he discharged his duty. It is known, by avowals afterwards made, that on at least one occasion he acted as Secretary of State contrary to his convictions. "It was utterly against my judgment and wishes, but I was obliged to submit, and I prepared the requisite despatches."[1] Such was his open declaration in the House of Representatives with regard to an important negotiation. So that it is easy to see how on this other occasion he may have represented the Government and not himself. But, whatever his actions at that time, it is beyond question, that afterwards, in his glorious career as Representative, when larger experience and still maturer years had added to his great authority, and he was called in Congress to express himself on his personal responsibility, we find him reconsidering his earlier diplomatic arguments, and, in the face of the world, defiantly claiming not only for Congress, but for the President, and every military commander within his department, full power to emancipate slaves under the Rights of War. If these words had been hastily uttered, or, if once uttered, had been afterwards abandoned, or if they could in any way be associated with the passions or ardors of controversy, as his earlier words were clearly associated with the duties of advocacy, they might be entitled to less consideration. But they are among the later and most memorable utterances of our great master of the Law of Nations, made under circumstances of peculiar solemnity, and repeated after intervals of time.[2]

* * * * *

[1] Congressional Globe, 27th Cong, 2d Sess., April 14, 1842, p. 424.

[2] The important passages introduced here will be found in an earlier speech, "Emancipation our Best Weapon," *ante*, Vol. VI. pp. 21 – 23.

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The representatives of Slavery broke forth in characteristic outrage upon the venerable orator, but nobody answered him. And these words have stood ever since as a landmark of public law. You cannot deny the power of Congress to liberate the slaves, without removing this landmark. Vain work! It is not less firm than the Constitution itself.

Thus do I vindicate for Congress all the Rights of War. If, assuming the powers of Congress, any further question be raised as to the extent of these rights, I reply, briefly, that there is no right, according to received authorities, against a hostile sovereign or prince, embracing, of course, confiscation of property, real as well as personal, which may not in our discretion be exercised against a rebel enemy; and the reason is obvious. Whatever the mitigations of the Rights of War introduced by modern civilization, under which private property in certain cases is exempt from confiscation, *this rule does not apply to cases where there is a direct personal responsibility for the war.* And here is the precise difference between the responsibility of the sovereign or prince and the responsibility of the private citizen: the private citizen is excused; but the sovereign or prince is always held responsible to the full extent of his property, real as well as personal. Now every rebel who has voluntarily become a public enemy has assumed a *personal responsibility*, for which, according to acknowledged principles of public law, especially if he has taken high office in the rebel government, he is liable to the full extent of his property, real as well as personal. Every citizen who voluntarily aids in armed rebellion is a hostile sovereign or prince.

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A generous lenity may interfere to limit his liability, but on principles of public law he is in the very condition of Shylock, when his cruelty was arrested by the righteous judge: —

> "If thou dost shed
> One drop of Christian blood, thy lands and goods
> Are by the laws of Venice *confiscate*
> Unto the State of Venice."

Such, Sir, is the extent of powers which may be exercised by Congress. Of course, it is for Congress to determine the degree of severity or lenity it will adopt. In claiming these powers to the full extent, I yield to no Senator in that spirit of clemency which, next to justice, is the grace and ornament of success.

Mr. President, these are the principles on which we must act. Announcing them and reducing them to practice, Congress will enlarge its accumulating claims to public gratitude.

The present Congress has already done much beyond any other Congress in our history. Measures, which for long years seemed attainable only to the most sanguine hope, have triumphed. Emancipation in the National Capital; freedom in all the National Territories; the offer of ransom to help emancipation in the States; the recognition of Hayti and Liberia; the treaty with Great Britain for the suppression of the slave-trade; the prohibition of the return of fugitive slaves by military officers; homesteads for actual settlers on the public lands; a Pacific railroad; endowments of agricultural colleges out of the public lands: such are some of the achievements by which the present Congress is already historic. There have been victories of war, won on

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hard-fought fields, but none comparable to the victories of peace. Besides these measures of unmixed beneficence, the present Congress has created an immense army and a considerable navy, and has provided the means for all our gigantic expenditures by a tax, which in itself is an epoch.

Thus, in the prosecution of the war, Congress has exercised two great powers, — first, to raise armies, and, secondly, to tax. Both bear directly upon loyal fellow-citizens everywhere throughout the country. Sons, brothers, and husbands are taken from happy homes and from the concerns of business, leaving vacant places, never, perhaps, to be filled again, and hurried away to wage a fearful war. But beyond this unequalled draft upon the loyal men of the country, summoning them to the hazards of battle, there is another unequalled draft upon the loyal property of the country, presenting a combined draft without precedent upon men and upon property. If you would find a parallel to the armies raised, you must go back to the forces marshalled under Napoleon in the indulgence of unbridled ambition. If you would find a parallel to the tax, you must go further back, to that early day of which the Gospel, in its simple narrative, speaks: "And it came to pass in those days that there went out a decree from Cæsar Augustus, that *all the world* should be taxed." A similar decree is about to go out from you, — not, indeed, to tax all the world, but to tax a large and generous people: vast, it may be, even for the world. There have been taxes here before; and in other countries there have been taxes as enormous: but there has been no such tax here before; and in no other country has any such tax been

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levied at once, without the preparation and education of long-continued taxation.

Confiscation and liberation are other War Powers of Congress, incident to the general grant of such powers, which it remains for us to employ. So important are they, that without them I fear all the rest will be in vain. Yes, Sir, in vain do we gather mighty armies, and in vain do we tax our people, unless we are ready to grasp these other means, through which the war can be carried to the homes of the Rebellion: I mean especially the criminal homes of the authors and leaders of all this wickedness. By the confiscation of property, the large Rebel estates, where treason laid its eggs, will be broken up, while by the liberation of slaves the Rebels will be deprived of an invaluable ally, whether in labor or in battle. But I confess frankly that I look with more hope and confidence to liberation than to confiscation. To give freedom is nobler than to take property, and on this occasion it cannot fail to be more efficacious, for in this way the rear-guard of the Rebellion will be changed into the advance-guard of the Union. There is in confiscation, unless when directed against the criminal authors of the Rebellion, a harshness inconsistent with that mercy which it is always a sacred duty to cultivate, and which should be manifest in proportion to our triumphs, "mightiest in the mightiest." But liberation is not harsh, and it is certain, if properly conducted, to carry with it the smiles of a benignant Providence.

The war began in Slavery, and it can end only with the end of Slavery. It was set in motion and organized by the Slave Oligarchy, and it cannot die except with

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this accursed Oligarchy. Therefore, for the sake of peace, and to restore the Union, every power should be enlisted by which Slavery, which is the soul of the war, can be reached. Are you in earnest? Then strike at Slavery. Liberation is usually known as a charity; but while none the less a charity, comprehending all other charities, it is now, in the course of events, *a necessity of war*. Through liberation alone can we obtain that complete triumph, bringing with it assured tranquillity, without which the war will stop merely to break forth anew, and peace will be nothing but an uneasy truce. Among all the powers of Congress incident to our unparalleled condition, there is none so far-reaching, as there is none so beneficent, — there is none so potent to beat down rebellion, as there is none other by which peace can be made truly secure. Powerful and beautiful prerogative! The language of Chatham is not misapplied, when I call it the "master feather of the eagle's wing."

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PRIZE-MONEY AND ITS POLICY.

REMARKS IN THE SENATE, JUNE 30, 1862.

THE pending bill, providing that property taken by the Rebels and then retaken under national authority should be restored to the former loyal owner without salvage, was opposed by Mr. Grimes.

Mr. Sumner said: —

I TAKE it that the policy of prize-money is always open to question. It has been handed down from other generations, but I cannot doubt, that, in proportion as nations advance in civilization and refinement, it is more and more drawn into doubt.

MR. GRIMES. I will ask the Senator, whether, under the law as it now exists, our officers and sailors have not certain vested rights? This bill is retrospective, as well as prospective.

MR. SUMNER. But these vested rights, according to existing law, are acquired in war with foreign enemies. And here is the precise point of principle. Certain property of fellow-citizens is taken, not by foreign enemies, but by rebels, and afterwards it is retaken. Several vessels are in this predicament. Even if the recapture were from a foreign enemy, English and American statutes treat it as a case of salvage, and not of prize. But the claim now made involves nothing less than the extension of the ancient rule of war to a new class. I

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am against such extension. I would have no amplification of such a rule.

I am disposed to go still further, and to reconsider the whole policy of prize-money in any case. Even if not ready for this larger question, the Senate will not hesitate to apply the limitation now proposed. Besides the hardship of prize-money at the expense of our own fellow-citizens, there is the uncivilized character of the whole system, which should make us pause.

The bill was passed, — Yeas 25, Nays 12.

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THE RANK OF ADMIRAL.

REMARKS IN THE SENATE, ON THE BILL TO ESTABLISH THE GRADES OF NAVY OFFICERS, JULY 2, 1862.

THE bill under consideration was "to establish and equalize the grades of line officers of the United States Navy." By this bill the rank of Admiral was established in the national navy. Mr. Hale moved to reduce the pay of admirals from five thousand seven hundred and eighteen to five thousand dollars.

Mr. Sumner said: —

I HOPE the amendment will prevail. For years we have been asked to make admirals. Congress has refused, — partly, perhaps, from motives of economy, and partly, also, from hesitation to create officers with that rank and title.

Now, Sir, I am willing, considering the increase of our navy and the exigency of the public service at this time, to create officers with that rank and title. So doing, we confer honor and consideration, — we bestow what officers, military and naval, naturally covet. Wherever they go, they will be addressed as Admiral; and, with naval men, that is much. Sir, I believe it more than money. But, while bestowing rank, I hesitate to increase emolument largely, particularly at this moment of our history. It costs nothing to confer rank; but it will be most expensive to the Treasury, if we enter upon a new scale of pay. Therefore I follow the Senator from New

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Hampshire in his proposition to reduce the salary. Create the admirals, — bestow this new title, this consideration, this introduction wherever the admiral goes, this equality, if you please, with the admirals of other nations and other fleets; but do not undertake to vie with those nations in salaries. To me it seems unwise.

The amendment was agreed to.

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TESTIMONY OF COLORED PERSONS IN THE COURTS OF THE UNITED STATES.

SPEECHES IN THE SENATE, ON AN AMENDMENT TO TWO DIFFERENT BILLS, ONE RELATING TO THE JUDICIARY, AND THE OTHER TO THE COMPETENCY OF WITNESSES, JULY 3 AND 15, 1862.

THE Senate having under consideration a bill "relating to the Judiciary," in which provision was made for proceedings "in the courts of the United States," Mr. Sumner made another attempt to overthrow the rule excluding colored witnesses by the following amendment: —

"And there shall be no exclusion of any witness on account of color."

This was rejected, — Yeas 14, Nays 21.

At the next stage of the bill, Mr. Sumner said: —

MR. PRESIDENT, — This bill relates to the national judiciary. The Senate is making rules for the courts of the United States, and now by its vote sanctions the rule that a witness who happens to have a color different from ours is incompetent to testify, he cannot be heard in court. The practical effect of such exclusion is, that any outrage by a white man on a colored person, if no other white person is present, must go unpunished; and the Senate of the United States refuses to interfere against this cruelty. I must say, Sir, that I lose my interest in the bill, when it is associated with such wickedness, — for such I must call it. If there is any outrage at this moment in the form of law, and actually within our reach, it is what I now hold

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up to the indignation of the country and of mankind. It is hard to think that human beings can be placed thus defenceless by Act of Congress, — that masters or overseers, being white, may offer to colored persons any offence, any brutality, and the testimony of the witnesses, merely because they are colored, shall be excluded absolutely. And yet, Sir, that is what the Senate to-day declares.

The Senator from New Hampshire [Mr. HALE] has voted to sustain this cruelty. Other Senators have voted to sustain it. It is their privilege. Each Senator votes, I know, according to his conscience; but, Sir, I call attention to the vote, and remind you of what occurred on another occasion. Formerly, when I moved this proposition, it was opposed on the allegation that it was not pertinent to the bill under consideration. When I moved it, the other day, on what was known as the Confiscation Bill, the other Senator from New Hampshire [Mr. CLARK] mildly suggested, that, at a proper occasion, on a proper bill, he would be ready to support it. I know that the motion must have the approbation of that excellent Senator. He is too just and too humane not to be in favor of it. And now, Sir, the time has come. Here is a bill regulating evidence in courts of the United States, — not in courts of the States, but in courts of the United States. The whole subject is directly before you. It is within your province now to decide. Yours the jurisdiction and power. And yet, Sir, you choose to continue the wrong. I shall vote for the bill on its final passage, because in other respects I think it ought to be a law; but I enter my protest against the conclusion of the Senate. It is melancholy, disastrous, discreditable.

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Mr. Hale vindicated the vote of the Senate, and insisted that the proper object of attack was the Supreme Court.

Mr. Sumner replied: —

THE Senator from New Hampshire severely criticizes the Supreme Court, which he reminds us has decided that the rights of citizenship, being rights that white men are bound to respect, and all the rights which make human life worth anything, are dead to colored persons; and he then proceeds forthwith to sustain a principle every way as bad. He condemns Chief-Justice Taney for declaring that colored persons are not citizens, and then, with marvellous logic, proceeds to say that he will not interfere to overturn the rule by which the testimony of colored persons is excluded from the national courts. Sir, I do not know which is most open to condemnation, the Supreme Court or the Senator. I am against the decision of the Supreme Court. The Senator knows it well. I am not one whit behind him in condemnation of that judgment, which must forever stand forth among the inhumanities of this generation. But permit me to remind the Senator that the rule he sustains is not less inhuman. There is not a word he can launch against the Court that must not rebound upon himself. To me it is unintelligible as painful that the Senator should interfere to save any such inhumanity. I use strong language, but it is only in this way that I can fitly characterize the doctrines of the Supreme Court and of the Senator. The Supreme Court has erred infinitely and wretchedly, but the Senator now errs in the same way.

The Senator is entirely mistaken, when he says that the rule which I seek to overturn proceeds from the Supreme Court. It is no such thing; and if I can

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have his attention one moment, I can make him understand it. The rule against the testimony of colored persons stands on the local law of the States, and not on any decision of the Supreme Court of the United States. The Court cannot interfere with it one way or the other. Congress alone, when legislating for its own courts, can interfere with it; and I entreat the Senate now, as it is about to legislate for the national courts, to interfere with it. The amendment of the Senator from Connecticut, which I have in my hand, is as follows:—

"That *the laws of the several States*, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as *rules of decision in all trials at Common Law* in the courts of the United States, in cases where they apply."

That is, the laws of the several States shall be rules of decision in the United States courts. That is what we declare. I simply propose to add, that those laws shall not be rules of decision in the United States courts, so far as they exclude witnesses on account of color. The Senator from New Hampshire opposes this just, humane, and irresistible proposition; and his argument is, that, instead of reaching the result by legislation, we must overturn the Supreme Court. Sir, permit me to say, his argument is entirely inapplicable, his whole philippic against the Supreme Court is out of place. Whether I agree with him or not, it is plain that this is not the time for it; and I must confess that I like to see things in their proper place. The question now is much more simple, more direct. Why enter upon the ample, illimitable debate which the Senator opens? Why review the Supreme Court and its rela-

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tions to the country, and whether it shall be overturned, whether it shall be reformed, whether it shall be modified? All this has nothing to do with the question, and the Senator, when he introduced it, simply diverted attention from the business before us. I do not know that he did it purposely. Indeed, I rather suspect the ardor of his nature, which has led him into this strange diversion with its irrelevant amplification.

But the Senator says that the cases in which colored persons are interested arise in the State courts, and not in the United States courts, and that therefore my amendment is entirely inapplicable. The Senator is entirely mistaken again. The United States courts have jurisdiction of crimes without reference to color. They also have civil jurisdiction in other cases which do not depend upon citizenship. The Senator, as a lawyer, knows this well; and yet, deliberately, by vote, and now by speech, he upholds the barbarous rule of exclusion on account of color. Sir, I do not know which was worse, the vote or the speech, although the latter was in harmony with the former. I was astonished at the vote. I am now astonished at the speech, which, pardon me, is as illogical in argument as bad in principle. Most kindly, but most earnestly, do I dissent from it. Sir, I do not wish to take up time, but the subject is of transcendent importance. You will bear with my frankness, if I add, that sanctioning this exclusion can do no honor to Congress. I am sure it must be recorded in judgment against us, and deservedly too. Civilization will blush at the record. God save us!

Mr. Davis, of Kentucky, followed with the remark: —

"I do not think, Mr. President, there was any need for sticking the perpetual, the all-pervading, the everywhere-to-be-found, the ever-in-the-way

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negro to this bill. I hope and trust that the Senate and the Congress of the United States will be allowed to mature and perfect some few bills, in which the interests and the business of the white man are involved, without having this ever-present negro stuck upon them by the Senator from Massachusetts. If he desires to bring up this matter of the negro in connection with the rules of proceeding in the Federal courts, let him introduce a distinct bill, and not make everything odoriferous of his friend."

Mr. Sumner then renewed his motion in the form of a proviso, and afterwards the Senate adjourned. The bill was never taken up again. But the same question was soon presented on another bill.

July 15th, the Senate had under consideration a bill concerning the competency of witnesses in courts of the United States, which provided that this should be regulated by "the laws of the State in which the court shall be held." Mr. Sumner offered his amendment again. It was opposed by Mr. Foster, of Connecticut, who had reported the pending bill. In the course of his remarks he said: "It is competent for every State to fix its own rules for itself, and the independence of each State of every other State requires that they should be protected in that right of making their own laws."

Mr. Sumner replied: —

MR. PRESIDENT, — It may be well, as the Senate is called to enact a new national statute, to glance back at an early landmark, and contemplate the principles declared by our fathers. I hold in my hand the Declaration of Independence, with these words at the beginning: "We hold these truths to be self-evident, that all men are created equal," &c. Now, Sir, the Senator from Connecticut [Mr. FOSTER], representing the Judiciary Committee, proposes to establish as a rule of evidence in the national courts that men are not equal.

Mr. Foster here interrupted to say that he proposed "no such rule of evidence"; that he simply proposed "to allow the laws of the several States of this Union to operate as rules to control the courts of the United States sitting within those several States, as it regards the competency of witnesses: that is all."

Mr. Sumner resumed: —

I could not intentionally do the Senator injustice.

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Nor do I find that I did him injustice; and he will therefore pardon me, if I repeat what I said before, — that, representing the Judiciary Committee, the Senator comes forward, in defiance of the Declaration of Independence, to ingraft into the legislation of the United States the practical principle that all men are not equal. The Senator rises and denies that he is doing any such thing. He simply recognizes local laws in the States. That is all, — nothing else. But pray, Sir, is not this enough? Local laws which defy the Declaration of Independence cannot be recognized without defying the Declaration; nor can the Senator escape responsibility merely by saying that he follows the local laws. Does he not sanction injustice? The case is plain. He asks us to legislate on the competency of witnesses. He proposes to regulate this competency by Act of Congress, where, among other things, we are to provide that in the courts of the United States witnesses shall be incompetent on account of color. The proposition is not made openly, but in the covert words, that the local laws of States shall in all cases prevail in the national courts. The Senator cannot forget these local laws, how instinct with barbarism they are, nor the shame and scandal they bring upon our country and upon civilization itself; and yet he would give them new sanction and effect, — not in the courts of the States, within the local jurisdiction, but in the courts of the United States, under the Constitution of the United States, within the national jurisdiction, where you and I, Sir, are responsible for the barbarism. No matter in what form it is put, no matter how subtly the attempt is concealed, it is the adoption by Congress of an outrageous rule.

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Offer any objection you please to the credibility of a witness, show that he is not intelligent, that he is not worthy of belief, that his character is bad, and make all proper deductions from his testimony on this account, but do not say that he is absolutely incompetent, that he cannot be heard in court, that, no matter how intelligent, truthful, or respectable, he cannot be admitted to testify, if he happens to be of another color than ourselves. Such exclusion is cruel to the witness, degrading to courts administering it, and destructive of justice, which seeks evidence from every quarter.

I listened closely to the ingenious argument of the Senator, going along with him in what he claimed for the States and for their courts. He said, each State is entitled, within its own jurisdiction, to have its rules of evidence. Granted. He thought it better to leave every State its own rule on this question. Granted again, Sir, so far as the courts of the States are concerned.

MR. FOSTER. Why allow them barbarism?

MR. SUMNER. Because I have no right to interfere with them.

MR. FOSTER. That answers the two questions.

MR. SUMNER. There is the mistake of the Senator. He confounds our duties in the two different cases of national courts, where we are responsible, and of State courts, where we have no responsibility and no right to interfere. In his remarks he said: "It is competent for each State to make these rules for itself." Granted again, — within its own jurisdiction. But he would allow each State its sovereign will on this question. Sir, where I cannot constitutionally interfere to check a barbarism, of course I do not interfere; sorrowfully I

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allow the sovereign will to prevail. But when a barbarism seeks shelter under the jurisdiction of Congress, when it falls under the direct responsibility of my vote, I cannot be silent.

The Senator will pardon me, if I add, that he erred, when he undertook to transfer the rules of the State courts, without amendment or modification, to the National courts. The State courts have their rules of evidence, — they are beyond our control; but the United States courts are within our control, and the time has come to bring them at last within the pale of civilization. Why, Sir, has the good cause advanced thus far? to what end is it triumphant on this floor, if, in determining rules of evidence in the national courts, we take up and sanction this relic of barbarism?

If the rule is not justly within our reach, pray, Sir, why are we asked to vote on a bill concerning the competency of witnesses, and with a section expressly regulating the whole subject? Sir, I should feel untrue to myself, untrue to the principles I have at heart, and to the people I have the honor to represent, if I allowed a bill like this, with such a title, with such an object, to pass without earnest endeavor to exclude from it all support of the vileness which seeks shelter under its words. Within a few days the Senator has voted for a bill to punish the fraudulent counterfeiting of postage stamps; but suppose the counterfeiter does his work in the presence of colored persons and nobody else, where, under the proposed rule, will the Senator find the evidence required to carry the law into effect? As long as Congress undertakes to legislate criminally, as long as it has courts with a national jurisdiction in the Slave States, it is due to itself,

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and it is due to justice, that it should furnish the evidence by which such legislation may be made effective, and justice be administered, without a constant act of shame calculated to bring a blush upon the cheeks. I speak plainly, as is my habit, and perhaps with feeling, but I trust that I have said nothing that I ought not to say.

The amendment was rejected, — Yeas 14, Nays 23. The next volume will show how this effort of Mr. Sumner at last prevailed.

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PROVISIONAL GOVERNMENTS AND RECONSTRUCTION.

REMARKS IN THE SENATE, ON A BILL TO ESTABLISH PROVISIONAL GOVERNMENTS IN CERTAIN CASES, JULY 7, 1862.

THIS was reported from the Judiciary Committee, by Mr. Harris, of New York, with certain amendments, one of which recognized "the laws and *institutions*" in a State before the Rebellion. On the latter amendment Mr. Sumner remarked: —

MR. PRESIDENT,— I cannot consent to the amendment. Plainly it is going too far. A government organized by Congress and appointed by the President is to enforce laws and institutions, some of which are abhorrent to civilization. Take, for instance, the Revised Code of North Carolina, which I have before me. Here is a provision which the Governor, under this Act, must enforce. I say must enforce. The amendment is, that there shall be "no interference with the laws and institutions existing in such State at the time its authorities assumed to array the same against the Government of the United States." Therefore they must be enforced. And now, if you please, listen to one of them.

"Any free person, who shall teach, or attempt to teach, any slave to read or write, the use of figures excepted, or shall give or sell to such slave any book or pamphlet, shall be deemed guilty of a misdemeanor, and upon conviction thereof, if a white man or woman, shall be fined not less

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than one hundred nor more than two hundred dollars, or imprisoned, and if a free person of color, shall be fined, imprisoned, or whipped, not exceeding thirty-nine nor less than twenty lashes."

That abomination, Sir, is set forth in the Revised Code of North Carolina, chap. 34, sec. 82. But lest it should fail by the employment of slaves as school-teachers, we have the following prohibition.

"It shall not be lawful for any slave to teach, or attempt to teach, any other slave or free negro to read or write, the use of figures excepted." [1]

The punishment of slaves for this offence is whipping, repeated for every act. But, Sir, here is another specimen.

"If any person shall wilfully bring into the State, with an intent to circulate, or shall wilfully circulate or publish within the State, or shall aid or abet the bringing into, or the circulation or publication of within, the State, any written or printed pamphlet or paper, whether written or printed in or out of the State, the evident tendency whereof is to cause slaves to become discontented with the bondage in which they are held by their masters and the laws regulating the same, and free negroes to be dissatisfied with their social condition and the denial to them of political privileges, and thereby to excite among the said slaves and free negroes a disposition to make conspiracies, insurrections, or resistance against the peace and quiet of the public, such person so offending shall be deemed guilty of felony, and on conviction thereof shall, for the first offence, be imprisoned not less than one year, and be put in the pillory and whipped, at the discretion of the court, and for the second offence *shall suffer death.*" [2]

[1] Chap. 107, sec. 31.

[2] Chap. 34, sec. 16.

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Here is yet another.

"If any free person of color shall preach or exhort in public, or in any manner officiate as a preacher or teacher in any prayer meeting, or other association for worship, where slaves of different families are collected together, he shall be deemed guilty of a misdemeanor, and, on conviction, shall, for each offence, receive not exceeding thirty-nine lashes on his bare back." [1]

And now one more.

"If any person shall wilfully carry or convey any slave, the property of another, without the consent of the owner or the guardian of the owner, with the intent and for the purpose of enabling such slave to escape out of this State, from the service of his owner, or any one having an interest in such slave, present or future, vested or contingent, legal or equitable, or if any person shall wilfully conceal any slave, the property of another, with such intent and purpose, the person so offending shall suffer death." [2]

I have read enough, Sir. These passages show you the statutes to be enforced in the name of the National Union, by its constituted authorities, in courts organized by Congress. And behind all these is Slavery itself to be enforced also.

Sir, such an exhibition is more than sufficient. You cannot consent to any such thing. In organizing these governments, all that we can do is to protect life and property, and generally to provide the machinery of administration. Further we cannot go, and protect institutions in themselves an outrage to civilization.

In the debate that ensued Mr. Sumner remarked: —

[1] Chap. 107, sec. 59.

[2] Chap. 34, sec. 11.

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In this country there is but one "institution," as all the world knows, and the phrase "and institutions," when carefully introduced, means only one institution, which I need not name.

Mr. Trumbull united with Mr. Sumner in criticizing the bill.

"I was for it in the Committee; but since I have seen the operation of these laws in the Southern States, and the manner in which persons acting in behalf of the United States undertake to execute them, I have changed my opinion in regard to the propriety of such a clause as this, and I agree with the Senator from Massachusetts. I cannot consent by my vote, and I never will consent by my vote, to give sanction to a law that punishes a man for teaching another to read the word of God."

The bill was allowed to drop. But this debate had its influence in showing how impossible it was to recognize "institutions" existing in a State before the Rebellion. Slavery and the Black Code were not to obtain license under any such terms. Here was a point in Reconstruction.

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TAXES ON KNOWLEDGE.

REMARKS IN THE SENATE, ON THE DUTIES UPON IMPORTED BOOKS AND RAGS, JULY 8, 1862.

MR. PRESIDENT, — I ask a moment's attention to the tax on books, which is raised in this bill from fifteen to twenty per cent. Assuming that this is done to increase the revenue, I have to say, that, if we place reliance on the evidence before us, it will not have such effect.

The annual importation of books during the last four years shows that a duty of ten per cent is more productive than a higher rate. The increased importation is more than compensation for the diminished rate; but here it is with books as with other things.

If there were a tax on the manufacture of books in our country, there might be reason for a corresponding duty; but there is no such tax.

By the experience of the last tariff we are warned. The increase of this duty was disastrous to the book-trade, and I am assured that several booksellers who have imported largely are withdrawing from this branch of business, because the rate of fifteen per cent renders it unprofitable. And yet you propose to raise the rate to twenty per cent.

Nor is there any practical argument founded on protection. There are no interests requiring protection

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which will be promoted by an increased duty, as appears in last year's memorial of publishers and importers, praying a reduction to ten per cent, and also in another and later memorial from New York importers, praying for the same reduction, and setting forth that their business seriously suffers from the existing rate.

And now I add, that this increased duty is a tax on knowledge, and as such to be discountenanced and opposed. But I rest my argument on the simple ground, that it will not increase the revenue. If at this exacting moment it would have any such consequence, much as I should regret the necessity, I could not oppose it. But it is easy to show that such will not be the consequence: at least, the statistics point this way. The total value of books imported in 1858, with a duty of eight per cent, amounted to five hundred and thirty thousand dollars: I do not give the odd figures. The total value in 1859, likewise with a duty of eight per cent, was seven hundred and seventy-seven thousand dollars; and in 1860, with the same rate, it was seven hundred and thirty-four thousand. In 1861, the total value, with a duty of fifteen per cent, sank as low as three hundred and forty-six thousand. These figures speak.

I do not err, when I infer from them that the higher duty has been an injury to the revenue, and also to the importer. Therefore it is open to a twofold objection. With a duty of ten per cent the revenue would gain, and the public with the importer would be benefited.

The case is stated in a few words. An increased duty on books will do nothing for the revenue; but it will interfere with a useful business, and at the same time impose a tax on knowledge.

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Mr. Sumner moved to reduce the tax from twenty to ten per cent, but, at the suggestion of Mr. Fessenden, Chairman of the Finance Committee, consented to fifteen per cent, which was adopted. The amendment failed between the two Houses.

The bill as it came from the House had a proviso, "That all imported cotton and linen rags for the manufacture of paper shall be free of duty." Mr. Sumner made an ineffectual effort to prevent this from being struck out. In the course of his remarks, he said: —

Here is another tax on knowledge. On the face it is a tax on rags; but rags are imported to make paper; so that a tax on rags is a tax on paper, and as such is a tax on knowledge.

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CONSTITUTIONAL QUORUM OF THE SENATE.

SPEECH IN THE SENATE, ON A RESOLUTION DECLARING THE CONSTITUTIONAL QUORUM, JULY 12, 1862.

ACCORDING to long-continued usage, a quorum of the Senate was a majority of the whole number of Senators, assuming each State represented by two Senators. After the withdrawal of the Rebel Senators, business was often embarrassed from the failure of what was supposed to be the constitutional quorum. To remove this difficulty, Mr. Sherman, April 11th, introduced the following: —

"*Resolved*, That a majority of the Senators duly elected and entitled to seats in this body is a constitutional quorum."

July 12th, Mr. Sumner said: —

MR. PRESIDENT, — What is a quorum depends upon the Constitution; but we approach its consideration with the knowledge that in England, the original home of our institutions, and especially of Parliamentary Law, the question, for a long period anterior to the National Constitution, was fixed by usage. Indeed, usage is authority for the larger part of the English Constitution. But in this case of a quorum the usage is liable to alteration. In his elaborate work on the Law and Practice of Legislative Assemblies, the Parliamentary Law on the subject is thus stated by Mr. Cushing: —

"In the British Parliament, according to the ancient and invariable usage of the two Houses, as evidenced by their

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rules, three is the number necessary to constitute a quorum of the Lords, and forty a quorum of the Commons. These numbers, respectively, although established by and dependent upon usage merely, and within the power of each House to abrogate or change at any time, have, nevertheless, the force of standing orders; that is, they are equally binding upon every succeeding Parliament until abrogated, and do not require to be specially adopted in order to be in force." [1]

It will be observed that the quorum of the Commons, numbering six hundred and fifty-four persons, is only forty, and this number appears to have been recognized as long ago as 5th January, 1640. At an earlier day more than sixty was required, and as late as March 18, 1801, an attempt was made in the Commons to revive this ancient rule, but it failed. For a short time in 1833 and 1834 the quorum for private business was twenty.[2]

The quorum of the Lords, numbering four hundred and sixty-five, is only three. A spectator at the law sessions of the Upper House is struck by the appearance of the Lord Chancellor on the woolsack, in wig and gown, listening to arguments, with two lay lords, like two lay figures, on the side benches, merely to constitute a quorum so as to legalize the decision of the Chancellor. The origin of this quorum, having the sanction of unbroken usage, is lost in the night of Antiquity. It is probably founded on the ancient maxim of the Roman Law, *Tres faciunt collegium*, — "Three make a *college*," — the latter word being equivalent, in some respects, to our word *corporation*.

Thus, according to Parliamentary Law, two things

[1] Law and Practice of Legislative Assemblies, § 248, pp. 95, 96.
[2] Ibid., § 248 and note.

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appear: first, the quorum of each House is within the control of the House; secondly, it is now, and always has been, in each House, much smaller than a majority.

With us the quorum, in general terms, is fixed by the Constitution. It is not left to usage, or the control of each House; but it is reasonable to infer that any question on the meaning of the Constitution, arising from generality of language, may be interpreted in the light of Parliamentary Law. Indeed, this is only according to the rule under which all technical words in the Constitution are interpreted. For instance, words known to the Common Law or to the English Chancery are interpreted according to the Common Law or the English Chancery. Mr. Wirt, in his admirable argument on the impeachment of Judge Peck, states the rule in these words: —

"The Constitution secures the *trial by jury*. Where do you get the meaning of a *trial by jury*? Certainly not from the Civil or Canon Law, or the Law of Nations. It is peculiar to the *Common Law;* and to the Common Law, therefore, the Constitution itself refers you for a description and explanation of this high privilege, *the trial by jury*, and the mode of proceeding in those trials. . . . . I insist, that, the moment that *a Court of Common Law* or *a Court of Equity* is established under the authority of the Constitution, its modes of proceeding and its powers of self-protection arise with it, and that the *very name* by which it is called into being authorizes it to look at once to the English archetypes for its government in these particulars."[1]

According to this rule, so clearly enunciated, the words "quorum" and "House," which are derived from Eng-

[1] Stansbury's Report of the Trial of James H. Peck, Appendix, p 499.

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lish Parliamentary Law, may be explained by that law; so that, in case of doubt, that law is for this purpose embodied in the Constitution. Now the Constitution declares that *a majority of each House* shall constitute a quorum to do business. The rule, it will be observed, is the same for each House. But the question arises, What is a majority of each House? or rather, putting aside all question with regard to the House of Representatives, which is perfectly free to determine for itself, What is a majority of the Senate?

In fixing the quorum at a majority rather than any smaller number, our Constitution followed the law of business corporations, where a majority always prevails, according to an old maxim of the Common Law, — *Ubi major pars est, ibi est totum*, — "Where *the greater part* is, there is the whole." This rule is so reasonable, that it has been vindicated by an eminent authority as founded on the Law of Nature. Here are the words of the great jurist Savigny: —

"The will of a corporation is not merely the concurring will of all its members, but even that of the greater number. Therefore the will of a majority of all its existing members is to be regarded as being properly invested with the rights of the corporation. This rule is founded on the Law of Nature, inasmuch as, if unanimity were demanded, will and action on the part of a corporation would be quite impossible. It is also confirmed by the Roman Law."[1]

Thomas Jefferson, a very different person from the German jurist, has also vindicated the rule.

"The *Lex majoris partis* is founded in Common Law as well as common right. It is the natural law of every as-

[1] System des heutigen Römischen Rechts, Band II. p. 329, § 97.

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sembly of men whose numbers are not fixed by any other law."[1]

But the question still occurs, What is the major part of the Senate? Is it the major part of the abstract or theoretical Senate, or the major part of the real Senate? In other words, is it the major part of the Senate contemplated by the Constitution, with two Senators from each State, or the major part of the actual Senate, counting only those entitled to vote? At the present moment there is a wide difference between the two cases.

Several clauses of the Constitution are applicable to this question. I group them together.

"The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six years."

"*A majority of each House* shall constitute a quorum to do business."

"The Congress, whenever *two thirds of both Houses* shall deem it necessary, shall propose amendments to this Constitution."

"A quorum for the purpose [the election of Vice-President] shall consist of two thirds of *the whole number of Senators*, and a majority of the whole number shall be necessary to a choice."

Probably "the whole number of Senators" is equivalent to the term "House." But what is the "House"?

The Senate *de jure* consists of two Senators from each State.

The Senate *de facto* may consist of Senators actually elected and qualified, or of Senators actually elected.

Whether the "House" shall be the Senate *de jure* or

[1] Notes on Virginia, Query XIII.: Writings, Vol. VIII. p. 367.

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the Senate *de facto* is now within our discretion. The question has been raised, and the way is open to adopt either interpretation, according to the meaning of the Constitution as seen in the light of Parliamentary Law, and, I add also, of convenience.

According to Parliamentary Law, the whole question is in our hands.

According to convenience, the quorum should be founded on the actual Senate, being the Senators actually elected and qualified.

If ever the argument of convenience was strong, peculiarly strong, it is now, when a wicked rebellion has undertaken to withdraw the Senators of eleven States, thus reducing our numbers. It is not necessary to assert that these States should be no longer counted among our stars. It is enough, if we declare that their vacant chairs shall no longer be counted in our quorum. As the language of the Constitution is drawn into debate, I cannot doubt, that, according to Parliamentary Law, the present question is within the control of the Senate, to be determined by the teachings of reason and convenience, so as to assure the public welfare. Any other interpretation must leave the Senate to all the hazards of disorganization by treason, or, it may be, by indifference. If the Senate declines to exercise this power, it will abandon an essential principle of self-defence.

An extreme case might be put, where, through defection, the actual Senators are reduced to a mere handful. But the rule is not to be tried by any such extreme case, which can occur only when the Government is broken up.

I rest confidently on the double conclusion: first,

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that the words of the Constitution with regard to the quorum of the Senate, so far as doubtful, are to be interpreted by Parliamentary Law; and, secondly, that, by Parliamentary Law, these words are within the control of the Senate, to be interpreted according to its own ample discretion under the exigency of the occasion.

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PROTEST AGAINST FINAL ADJOURNMENT OF CONGRESS.

REMARKS IN THE SENATE, ON A RESOLUTION FOR THE FINAL ADJOURNMENT OF THE TWO HOUSES, JULY 12, 1862.

JULY 12th, the question being on the final adjournment for the Session, Mr. Sumner said:—

MR. PRESIDENT,— I do not think, in the present state of the country, the Senate ought to adjourn, and for one I enter my protest against it, and I ask for the yeas and nays that I may make it of record.

It is essential to proper legislation not only that the Senate should vote, but that it should consider measures on which it votes; and the consideration must be in proportion to their importance. Allusion is made to one measure on which the Senate has not voted, — that in charge of my friend the Senator from Ohio [Mr. WADE], the admission of West Virginia as a new State. Perhaps no question of greater importance has ever been presented. It concerns the whole question of Slavery; it concerns the pretension of State Rights; it concerns also the results of this war. Look at it, therefore, in any aspect you please, it is a great question. And yet the idea of Senators anxious to adjourn is, that it is to be hurried forward without any proper discussion.

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There is another question, not less important. It is the bill of the Senator from New York [Mr. HARRIS], constituting Provisional Governments for the Rebel States, — a subject of transcendent importance, and I submit, also, of practical interest at this very moment; for it involves precisely this inquiry, Whether you are to allow a system of military governments or Congressional governments. It is a question between the military and the civil power.

Then we have the Army Bill, which my colleague has in charge. Few matters of greater importance have ever been laid before the Senate. It involves nothing less than the organization in our country of a system of conscription, so well known on the Continent of Europe, but thus far happily unknown to us; and yet, Sir, this great question, also, is to be hurried forward without any adequate discussion.

Then we have Executive business, to which I can only allude in a general way, but of vast moment, which cannot be adequately considered without days, and I might say weeks.

Then we have also the whole Calendar, to which the Senator from Illinois has referred, that ought to occupy us for weeks.

Here are at least five important matters, — West Virginia, the Provisional Governments, the Army Bill, Executive business, and the whole Calendar, — all open to consideration; and yet, Sir, Senators propose to go home, — Senators are weary, — Senators would like to find a retreat, away from these legislative cares. I can enter into that feeling. Sir, I should be glad to be at home. I suppose the gallant soldiers on the James River, on the Chickahominy, would also be glad to be

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at home. They are not excused, they have not a furlough, — and yet we Senators talk of our furlough.

Now it is known that formerly, when Congress was paid by the day, it never thought of adjourning at this time. One of the most important bills on your statute book bears date the 18th day of September, 1850;[1] and for some years immediately thereafter Congress did not adjourn until late in August. I think I have sat myself close upon September; but when I mentioned this fact the other day, the Senator from Ohio reminded me that then Congress was paid by the day, whereas now it is paid by the year. Has it come to this, that Congress could sit here content when paid by the day, and now that it is paid by the year it leaves its important business to be neglected entirely, or to be hurried forward without that discussion which it ought to receive?

Sir, I hope the Senate will not consent to fix any day of adjournment. I hope it will sit here, proceeding regularly with the business now on its Calendar, and meeting any contingencies which in the present state of the country may arise. A duty is cast upon Congress which ought not to be slighted. It is to see that the Republic receives no detriment. Solemnly now this duty addresses itself to all of us. Let us not neglect it. For the sake of the public business, and for the sake of those responsibilities which from their very uncertainty at this crisis are so vast, I ask the Senate to continue here.

The resolution, which was originally for adjournment on Monday, July 14th, was amended by substituting Wednesday, July 16th, and then, as amended, adopted, — Yeas 29, Nays 10.

[1] The Fugitive Slave Act.

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July 14th, President Lincoln communicated to Congress the draught of a bill to compensate any State which might abolish Slavery within its limits, the passage of which as presented he earnestly recommended. On motion of Mr. Sumner, the Message with the accompanying draught was referred to the Committee on Finance. Immediately thereafter he offered the following resolution.

"*Resolved*, That, in order that the two Houses of Congress may have time for the proper consideration of the Message of the President and the accompanying bill for Emancipation in the States, and for the transaction of other public business, the resolution fixing Wednesday, the 16th of July, for adjournment, is hereby rescinded."

The consideration of the resolution was objected to.

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PATRIOTIC UNITY AND EMANCIPATION.

LETTER TO A PUBLIC MEETING AT NEW YORK, JULY 14, 1862.

WASHINGTON, July 14, 1862.

DEAR SIR, — I welcome and honor your patriotic efforts to arouse the country to a generous, determined, irresistible unity in support of the National Government; but the Senate is still in session, and my post of duty is here. A Senator cannot leave his post, more than a soldier.

But, absent or present, the cause in which the people are to assemble has my God-speed, earnest, devoted, affectionate, and from the heart. What I can do let me do. There is no work I will not undertake, there is nothing I will not renounce, if so I may serve my country.

There must be unity of hands, and of hearts too, that the Republic may be elevated to the sublime idea of a true commonwealth, which we are told "ought to be but as one huge Christian personage, one mighty growth and stature of an honest man, as big and compact in virtue as in body."[1] Oh, Sir, if my feeble voice could reach my fellow-countrymen, in workshops, streets, fields, and wherever they meet together, if for one moment I could take to my lips that silver trumpet with tones to sound and reverberate throughout the land, I would summon all, forgetting prejudice and turning away from error, to

[1] Milton, Of Reformation in England, Book II.: Prose Works, ed. Symmons, Vol. I. p. 29.

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help unite, quicken, and invigorate our common country — most beloved now that it is most imperilled — to a compactness and bigness of virtue in just proportion to its extended dominion, so that it should be as one huge Christian personage, one mighty growth and stature of an honest man, instinct with all the concentration of unity. Thus inspired, the gates of Hell cannot prevail against us.

To this end the cries of faction must be silenced, and the wickedness of sedition, whether in print or public speech, must be suppressed. These are the Northern allies of the Rebellion. An aroused and indignant people, with iron heel, must tread them out forever, as men tread out the serpent so that it can neither hiss nor sting.

With such concord God will be pleased, and He will fight for us. He will give quickness to our armies, so that the hosts of the Rebellion will be broken and scattered as by the thunderbolt; and He will give to our beneficent government that blessed inspiration, better than newly raised levies, by which the Rebellion shall be struck in its single vulnerable part, by which that colossal abomination, its original mainspring and present motive power, shall be overthrown, while the cause of the Union is linked with that divine justice whose weapons are of celestial temper.

God bless our country! and God bless all who now serve it with singleness of heart!

I have the honor to be, dear Sir,

Your faithful servant,

CHARLES SUMNER.

CHARLES GOULD, Esq.,
Secretary of the Select Committee.

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HARMONY WITH THE PRESIDENT AND EMANCIPATION.

SPEECH IN THE SENATE, ON THE JOINT RESOLUTION EXPLANATORY OF THE ACT FOR CONFISCATION AND LIBERATION, JULY 16, 1862.

WHILE the bill providing for Confiscation and Liberation was in the hands of the President, and before its signature, it was understood that he objected to it on certain grounds, one of which was that under it real estate was forfeited beyond life. In point of fact, the President had already drawn up a Message stating his objections to its becoming a law.[1] In anticipation of these objections, a joint resolution was adopted, containing the provision, "Nor shall any punishment or proceedings under said Act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."[2]

Mr. Sumner did not sympathize with the objections, but, in his anxiety to secure the approval of the Act as a step to Emancipation, he did not hesitate to support the joint resolution.

July 16th, he said: —

MR. PRESIDENT, — Our country is in peril. This is much to say, but it must be said, and we must all govern ourselves accordingly. More than ever before, the time has come for an earnest, absolute, controlling patriotism. This is the lesson of the day. In presence of such peril, and under the weight of such duties, there is no pride of opinion which I would not freely sacrifice, nor can I stand on any order of proceeding. I ask no

[1] Senate Journal, July 17, 1862, pp. 872–874. Congressional Globe, 37th Cong. 2d Sess., p. 3406.

[2] Statutes at Large, Vol. XII. p. 627.

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questions, and I make no terms. Show me how an important measure can be secured, which I think vital to the country, and I shall spare no effort to secure it.

Rules are for protection, for defence, and to facilitate business. If in any way they become an impediment, they cease to perform their natural office, and I can easily abandon them, especially when my country may suffer. Therefore, Sir, I am only slightly impressed by the argument that our information with regard to the President is informal. It is enough that a measure we all have at heart as essential to national life may fail to receive his constitutional approval, unless modified in advance by supplementary statute. Anxious for this measure, I think how it may be secured, rather than how the opinions of the President have become known to us.

Of course, Sir, I cannot share the doubts attributed to the President. To me they seem groundless and fallacious. Waiving all question of their accuracy as an interpretation of the Constitution, even in criminal proceedings, I cannot forbear saying that they proceed on the mistaken idea of a procedure by *indictment* and not by *war*, subjecting the country to all the constraint of a criminal trial when the exigency requires the ample latitude of war. If soldiers are sent forth to battle, if fields are occupied as camps, and houses are occupied as hospitals, without permission of the owners, it is under the War Powers of Congress, or, in other words, the belligerent rights of this Government. And it is by virtue of these same belligerent rights that the property of an enemy is taken. Now, if he be an enemy, is there in the Constitution any check upon these rights? Whether you choose to take property for life or beyond life, the

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Constitution is indifferent; for all constitutional limitations are entirely inapplicable to belligerent rights. There are express words ordaining that you must not "abridge the freedom of speech or of the press," or "infringe the right of the people to keep and bear arms"; nor can you take "life, liberty, or property, without due process of law." And yet, wherever your armies move, and elsewhere too, you do all these very things in the exercise of acknowledged belligerent rights. As plainly, the right of confiscation, whether for life or beyond life, is also yours.

Unhappily, Sir, our country is engaged in war, — terrible, relentless, unquestionable war, — and if we would not discard success, it must be prosecuted as war, in the full exercise of belligerent rights. If we were dealing with sporadic cases of treason, with simple sedition, or with a mere outbreak, our process would be limited by the Constitution; but with an enemy before us, lashed into fury and led on by "Até hot from Hell," where is the limit to the powers to be employed? I remember that Burke, in his great effort on Conciliation with America, says: "It looks to me to be narrow and pedantic to apply the ordinary ideas of criminal justice to this great public contest; I do not know the method of drawing up an indictment against an whole people." [1] But when, on account of a provision in the Constitution obviously intended only for the protection of *the citizen*, you refuse to take the property of *an enemy in open war*, then do you substitute the safeguards of criminal justice for war, thus voluntarily weakening your armies and diminishing your power. I am tempted to say, that, in devotion to the form of the Constitution, you sacrifice

[1] Works (London, 1801), Vol. III. p. 69.

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its substance. I might say, that, in misapplying the text of the Constitution, you sacrifice the Constitution itself.

Pardon me for seeming, even briefly, to argue this question. I do it only because I would not have my vote misunderstood. I shall support the proposition, not because I concur with it, but because its adoption will help secure the approval of the bill that has so much occupied the attention of Congress and the hopes of the country.

Mr. President, I have never, from the beginning, disguised my conviction that the most important part of the bill concerns Emancipation. To save this great part, to secure this transcendent ally, to establish this assurance of victory, and to obtain for my country this lofty crown of prosperity and glory, I willingly abandon all the rest. The navigator is called sometimes to save his ship by casting part of the cargo into the sea.

But whatever the difference between the President and Congress, there are two points on which there is no difference. Blacks are to be employed, and slaves are to be freed. In this legislative proclamation the President and Congress will unite. Together they will deliver it to the country and to the world.

It is an occasion of just congratulation, that the long debates of the session have at last ripened into a measure which I do not hesitate to declare more important than any victory achieved by our arms. Thank God, the new levies will be under an inspiration which cannot fail. It is the idea of Freedom, which, in spite of all discomfiture, past or present, must give new force to the embattled armies of the Republic, making their conflicts her own.

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Sir, from this day forward the war will be waged with new hopes and new promises. A new power is enlisted, incalculable in influence, strengthening our armies, weakening the enemy, awakening the sympathies of mankind, and securing the favor of a benevolent God. The infamous Order No. 3, which has been such a scandal to the Republic, is rescinded. The slave everywhere can hope. Beginning to do justice, we shall at last deserve success.

The original bill and the explanatory joint resolution were returned to the Senate together, with the approval of the President, July 17th, being the last day of the session, and just before its close.

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UNION OF GOOD CITIZENS FOR A FINAL SETTLEMENT.

LETTER TO THE REPUBLICAN STATE COMMITTEE, SEPTEMBER 9, 1862.

AT the Republican State Convention at Worcester, September 10th,[1] Mr. Claflin, Chairman of the State Committee, read the following letter from Mr. Sumner, which, according to the report, was received with great applause.

BOSTON, September 9, 1862.

MY DEAR SIR,—As a servant of the State, I have always recognized the right of my constituents in State Convention to expect from me such counsels on public affairs as I could offer, and I have accepted with gratitude the invitations with which they have honored me. If now, in these dark days, when danger thickens, I do not take advantage of the opportunity you present, believe me, it is not from indifference, nor is it because our duties at this moment are uncertain.

Eagerly do gallant soldiers (God bless them!) rush to the field of death for the sake of their country. Eagerly do good citizens at home (God bless them!) contribute of their abundance, or it may be of their poverty, to smooth the lot of our gallant soldiers. But there is

[1] At this Convention Mr. Sumner was nominated for reëlection as Senator. See, *post*, pp. 240, 241.

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another duty, hardly less commanding. It is union, without distinction of party, to uphold the Government, and also to uphold those who uphold the Government. Therefore do I recognize the just liberality of the call for our Convention, which is addressed not only to Republicans, but also to "all who support the present National and State Governments and are in favor of the use of all means necessary for the effectual suppression of the Rebellion." Under such a call there is no patriot citizen of the Commonwealth who may not claim a place.

Is there a patriot citizen who hesitates to support the National Government, beleaguered by a rebel enemy?

Is there a patriot citizen who hesitates to support the State Government, now, under the inspiring activity and genius of John A. Andrew, so efficiently sustaining the National Government?

And is there a patriot citizen who is not for the use of all means necessary for the effectual suppression of the Rebellion?

Were I able to be at the Convention, according to the invitation with which you honor me, gladly would I appeal to all such citizens. This country must be saved; and among the omens of victory I hail confidently that unanimity of sentiment and trust with which all loyal citizens now look to the National Government, determined that nothing of energy or contribution or sacrifice shall be wanting, by which its supremacy may be reëstablished. Another omen is yet needed. It is that the people, forgetting the past, shall ascend to that plane of justice and truth where is the light of candor, and all shall frown indignantly upon the rancors and animosi-

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ties of party, which even now are so disturbing in their influence, shall silence the senseless prejudices of personal hate, and stifle the falsehoods of calumny, so that here among ourselves there may be unity and concord, giving irresistible strength to our patriotic labors.

Beyond this appeal from heart to heart, I should rejoice to show clearly *how to hamstring this Rebellion and to conquer a peace*, all of which I am sure can be done. To this *single practical purpose* all theories, prepossessions, and aims must yield. So absorbing at the present moment is this question, that nothing is practical which does not directly tend to its final settlement. All else is blood-stained vanity. And the citizen soldiers you send forth to battle may justly complain, if you neglect any means by which they may be strengthened. Good Democrats, who have enjoyed the confidence of their party and also public trust, — Daniel S. Dickinson, of New York, and Robert Dale Owen, of Indiana, — bear their generous testimony. So also does Parson Brownlow, of Tennessee, in a letter which I have just read, where he says that the negroes "must be urged in every possible way to crush out this infernal Rebellion." Butler bore his testimony, when, by virtue of an outstanding order of the Rebel Governor of Louisiana, he organized a regiment of colored persons in the national service. Banks also symbolized the idea, when, overtaking the little slave-girl on her way to Freedom, he lifted her upon the national cannon. In this act — the brightest, most touching, and most suggestive of the whole war, which Art will hereafter rejoice to commemorate — our Massachusetts general gave a lesson to his country. Who can doubt that the country will yet be saved?

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I hope you will excuse me to my fellow-citizens of the Convention, and believe me, with much regard,

Very faithfully yours,

CHARLES SUMNER.

To HON. WM. CLAFLIN,
Chairman of State Committee.

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THE PROCLAMATION OF EMANCIPATION:

ITS POLICY AND NECESSITY AS A WAR MEASURE FOR THE SUPPRESSION OF THE REBELLION.

SPEECH AT FANEUIL HALL, OCTOBER 6, 1862. WITH APPENDIX, ON THE NOMINATION AND REËLECTION OF MR. SUMNER AS SENATOR.

A patriot's blood,
Well spent in such a strife, may earn, indeed,
And for a time insure to his loved land,
The sweets of Liberty and Equal Laws.

COWPER, *The Task*, Book V. 714 – 717.

I assure you,
He that has once the Flower of the Sun,
The perfect ruby which we call Elixir,
Not only can do that. but by its virtue
Can confer Honor, Love, Respect, Long Life,
Give Safety, Valor, — yea, and Victory, —
To whom he will.

BEN JONSON, *The Alchemist*, Act II. Sc. 1.

Rendez-les libres, — et plus près que vous de la nature, ils vaudront beaucoup mieux que vous.

CONDORCET, *Note* 109 *aux Pensees de Pascal.*

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When a leak is to be stopped, or a fire extinguished, do not all hands cooperate without distinction of sect or party? Or if I am fallen into a ditch, shall I not suffer a man to help me out, until I have first examined his creed? — Bishop Berkeley, *A Word to the Wise, or an Exhortation to the Roman Catholic Clergy of Ireland:* Works (London, 1837), p. 360.

May Congress not say that every black man must fight? Did we not see a little of this last war? . . . . Have they not power to provide for the general defence and welfare? May they not think that these call for the abolition of Slavery? May they not pronounce all slaves free? And will they not be warranted by that power? This is no ambiguous implication or logical deduction. The paper speaks to the point. — Patrick Henry. *Debates in the Virginia Convention on the Adoption of the Federal Constitution:* Elliot's Debates, Vol. III. p. 590.

The natural strength of the country, in point of numbers, appears to me to consist much more in the blacks than in the whites. Could they be incorporated and employed for its defence, it would afford you double security. That they would make good soldiers I have not the least doubt. — Major-General Nathanael Greene, *Letter to Governor Rutledge:* Johnson's Life of Greene, Vol. II. p. 274.

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THE anxiety which prevailed so extensively was restored by the Proclamation of Emancipation, at last put forth by the President, September 22, 1862. Besides enjoining obedience to the Acts of Congress already passed against Slavery, it declared: —

"That, on the first day of January in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom."[1]

The work was completed by the final proclamation of January 1, 1863.[2]

There was an echo to these proclamations throughout the country, and also from the Rebel States. The *Richmond Whig* said of the first: "It is a dash of the pen to destroy four millions of our property, and is as much as a bid for the slaves to rise in insurrection, with the assurance of aid from the whole military and naval power of the United States." In another article, it spoke of "the fiends of the new programme." These feelings, after debate in the Rebel Congress, found vent in the following terms.

"That, in the judgment of Congress, the proclamations of the President of the United States, dated respectively September twenty-second, eighteen hundred and sixty-two, and January first, eighteen hundred and sixty-three, and the other measures of the Government of the United States, and of its authorities, commanders, and forces, designed or tending to emancipate slaves in the Confederate States, or to abduct such slaves, or to incite them to insurrection, or to employ negroes in war against the Confederate States, or to overthrow the institution of African Slavery and bring on a servile war in these States, would, if successful, produce atrocious consequences, and they are inconsistent with the spirit of those usages which in modern war-

[1] United States Statutes at Large, Vol. XII., Appendix, p. 1267.

[2] The pen with which the President signed the final proclamation was given by him to George Livermore, author of the "Historical Research respecting the Opinions of the Founders of the Republic on Negroes as Slaves, as Citizens, and as Soldiers."

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fare prevail among civilized nations; they may, therefore, be properly and lawfully repressed by retaliation." [1]

The earlier proclamation caused a thrill in Massachusetts. Earnest people, who had longed for it, were rejoiced and comforted. At the invitation of his fellow-citizens, Mr. Sumner consented to address them at Faneuil Hall, in response to the proclamation.

The proceedings at this crowded meeting, which was held at noon, are copied from the newspapers of the day.

The meeting was called to order by George S. Hale, Esq., Chairman of the Ward and City Committee, who submitted the following list of names for the officers of the meeting.

President, — William Claflin, of Newton.

Vice-Presidents, — Francis B. Crowninshield, Alexander H. Bullock, Julius Rockwell, Peleg W. Chandler, Oakes Ames, John Gardner, Lee Claflin, Robert W. Hooper, James M. Barnard, Francis B. Fay, Jacob Sleeper, Edward S. Tobey, Stephen H. Phillips, Waldo Higginson, Samuel May, John Nesmith, William J. Rotch, Eliphalet Trask, Martin Brimmer, Henry I. Bowditch, Gerry W. Cochrane, Charles H. Parker, Charles O. Whitmore, John D. Baldwin, John R. Brewer, John M. S. Williams, James P. Thorndike, Samuel Hall, Artemas Lee, Robert B. Storer, Julius A. Palmer, John L. Emmons, William I. Bowditch, Abel G. Farwell, Alvah Crocker, Otis Norcross, John J. May, Phineas E. Gay, Nathan Cushing, Robert C. Pitman, Alexander H. Twombly, Warren Sawyer, James Adams, Moses Kimball, Theodore Otis, Alvah A. Burrage, David Snow, Edwin Lamson, John Demeritt, John M. Forbes, William Washburn, Arba Maynard, Joseph T. Bailey, Osborn Howes, Daniel Farrar, John Chandler, John Q. A. Griffin, Robert E. Apthorp, William Bellamy, Alexander Wadsworth, Edward Buffinton, Nehemiah Boynton, Phineas J. Stone, William B. Spooner, Frederick Nickerson, P. Emory Aldrich, Abijah W. Farrar, William Pope, Charles C. Barry, Timothy W. Hoxie, Avery Plumer, Ephraim Allen, J. Warren Merrill, Peter B. Brigham, George F. Williams, Pliny Nickerson, John A. Nowell, Arthur W. Tufts, Roland Worthington, John Bertram, Frank B. Fay, J. Ingersoll Bowditch, William Endicott, Jr., Edward Atkinson, Nathaniel C. Nash, Franklin Snow, J. Wingate Thornton, Samuel Johnson, Edward A. Raymond, Albert L. Lincoln, Francis E. Parker, Charles O. Rogers, William Fox Richardson, John G. Webster, Leister M. Clark, Chester Guild, Jr., Estes Howe, William Brigham.

Secretaries, — William S. Robinson, Delano A. Goddard, Stephen N.

[1] Joint Resolution on the Subject of Retaliation, May 1, 1863: Public Laws of the Confederate States of America, 1st Cong. 3d Sess., (Richmond, 1863,) p. 167.

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Stockwell, William W. Clapp, Jr., Hamlin R. Harding, H. Burr Crandall, Henry M. Burt, Ebenezer Nelson, George H. Monroe, Stephen N. Gifford.

On taking the chair, Mr. Claflin was received with great applause. He spoke as follows.

"LADIES AND GENTLEMEN, — None of you can be more disappointed at the present time than myself, that I am called upon to occupy this position.

"At the last moment we were informed that his Excellency the Governor[1] was compelled by the duties of his position, and his desire ever to do for the interests of those brave men who have gone forth for our defence, to leave the State, and to leave us to-day in your hands. [*Applause.*]

"Under these circumstances, and at the last moment, by the desire of the Committee of Arrangements, I consented to occupy this position; but you will, of course, excuse me from making any remarks on this occasion. My heart is in the cause. This is a great era, and this is the time when every man should come up to the work and fight for this nation, doing everything which he can, whether by his purse or his sword, to sustain the Government. [*Cheers.*]

"Thanking you for the honor you have conferred upon me, I now await any motion which may be made."

Resolutions sustaining Emancipation were then read by Charles W. Slack, and, amidst cries of "Good!" and great applause, were adopted.

The President then said: —

"I now introduce to you Massachusetts' — ay, Boston's — honored son. I need not praise him, I need not eulogize him; but I will simply say, it is CHARLES SUMNER."

The enthusiasm that followed Senator Sumner's stepping on the platform was not surpassed by anything that has been seen in the Hall since Senator Webster took the same place on *his* return from Washington years ago. The air below was dark with waving hats, and along the galleries white with fluttering kerchiefs. When the applause subsided, a colored man cried out, "God bless Charles Sumner!" in an earnest, trembling, "tearful" voice, and the applause was renewed.

The meeting is described as "of much enthusiasm on the part of the overflowing audience that gathered and tried to gather within the ancient walls."

A few sentences from the London *Morning Star* will show how this effort was recognized at a distance.

"The Massachusetts Senator has lately had a meeting with his constituents. Fragments and summaries of his speech at Faneuil Hall have found

[1] John A. Andrew.

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their way into most English newspapers. Let the sympathizers with the South produce, if they can, from their side of Mason and Dixon's line, any utterance to compare with it in all the qualities that should commend human speech to human audience. . . . .

"This representative of a powerful community addresses to his fellow-citizens considerations upon the conduct of a war in which they and he are more deeply interested than any English constituency has been in any war which England has waged since the days of Cromwell. It is such a speech as Hampden might have spoken in Buckinghamshire, or Pym in the Guildhall. It treats both of principles and policy, — of the means of success, and of the ends which can alone sanctify the struggle or glorify success. It breathes throughout the spirit of justice and of freedom. . . . .

"Throughout his public life, Mr. Sumner has held the same doctrines, expressed the same spirit. . . . . He is the leader of a party, as well as the representative of the first New England State, and Chairman of the Foreign Affairs Committee of Congress. Too advanced a thinker and too pure a politician for office in a Cabinet undecided on the Slavery Question, he has pioneered its way and shaped its conclusions. Is he not a man whose name should check the blustering apologists of Slavery and Secession? . . . . The Rebellion is just such a blow at the Union as Preston Brooks struck at Charles Sumner; and yet there are English hands and voices to applaud the deed, as worthy heroes of patriotism and civilization."

In urging Emancipation, Mr. Sumner always felt, that, besides sustaining the cause of justice, he was helping our country with foreign nations.

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SPEECH.

FELLOW-CITIZENS OF MASSACHUSETTS: —

MEETINGS of the people in ancient Athens were opened with these words: "May the gods doom to perdition that man, and all his race, who, on this occasion, shall speak, act, or contrive anything against the Commonwealth!" With such an imprecation all were summoned to the duties of the citizen. But duties become urgent in proportion to perils. If ever there were occasion for these solemn words, it is now, when the country is in danger, when the national capital itself is menaced, when all along the loyal border, from the Atlantic Ocean to the Indian Territories west of the Mississippi, barbarian hordes, under some Alaric of Slavery, are marshalling forces, and death is knocking at the doors of so many happy homes. If ever there was occasion when country might claim the best and most self-forgetful effort of all, it is now. Each in his way must act. Each must do what he can: the youthful and strong by giving themselves to the service; the weak, if in no other way, by scraping lint. Such is the call of patriotism. The country must be saved.

Among omens which I hail with gladness is the union now happily prevailing among good men in support of the Government, whether State or National, —

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forgetting that they were Democrats, forgetting that they were Whigs, and disregarding old party names, to remember only the duties of the citizen. Another sign, not less cheering, is the generous devotion which all among us of foreign birth offer to their adopted country. Germans fight as for fatherland, and Irishmen fight as for loved Erin; nor can our cause be less dear to the latter, now that the spirit of Grattan and O'Connell has entered into it.

Surely this is no time for the strife of party. Its jealousies and antipathies are now more than ever irrational. Its clamors of opposition are now more than ever unpatriotic. Unhappily, there are some to whom its bitter, unforgiving temper has become so controlling, that, even at this moment, they would rather enlist to put down a political opponent than to put down the rebel enemy of their country, — they would rather hang Henry Wilson or John A. Andrew than hang Jefferson Davis or Robert Toombs. Such persons, with all their sweltered venom, are found here in Massachusetts. Assuming the badge of "No Party," they are ready for any party, new or old, by which their prejudices may be gratified, — thus verifying the pungent words of Colonel Benton: "Wherever you will show me a man with the words 'No Party' in his mouth, I will show you a man that figures at the head or dangles at the tail of the most inveterate party that ever existed." Of course, such persons are not expected to take part in a meeting like the present, which seeks to unite rather than divide, while it rallies all to the support of the President, and to that policy of Freedom he has proclaimed.

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Thank God that I live to enjoy this day! Thank God that my eyes have not closed without seeing this great salvation! The skies are brighter and the air is purer now that Slavery is handed over to judgment.

By the proclamation of the President, all persons held as slaves January 1, 1863, within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom. Beyond these most effective words, which do not go into operation before the new year, are other words of immediate operation, constituting a present edict of Emancipation. The President recites the recent Acts of Congress applicable to this question, and calls upon all persons in the military and naval service to observe, obey, and enforce them. But these Acts provide that all slaves of Rebels, taking refuge within the lines of our army, all slaves captured from Rebels or deserted by them, and all slaves found within any place occupied by Rebel forces and afterwards occupied by forces of the United States, shall be forever free of servitude, and not again held as slaves; and these Acts further provide, that no person in the military or naval service shall, under any pretence whatever, assume to decide on the validity of any claim to a slave, or surrender any such person to his claimant, on pain of being dismissed from the service: so that by these Acts, now proclaimed by the President, Freedom is practically secured to all who

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find shelter within our lines, and the glorious flag of the Union, wherever it floats, becomes the flag of Freedom.

Thank God for what is already done, and let us all take heart as we go forward to uphold this great edict! For myself, I accept the Proclamation without note or comment. It is enough for me, that, in the exercise of the War Power, it strikes at the origin and mainspring of this Rebellion; for I have never concealed the conviction that it matters little where we strike Slavery, provided only that we strike sincerely and in earnest. So is it all connected, that the whole must suffer with every part, and the words of the poet will be verified, that, —

"whatever link you strike,
Tenth or ten thousandth, breaks the chain alike."

On this most interesting occasion, so proper for gratitude, it is difficult to see anything but the cause; and yet, appearing before you on the invitation of a Committee of the Commonwealth, I must not forget that I owe this privilege to my public character as Senator of Massachusetts. In this character I have often been invited before; but now the invitation has more than accustomed significance; for, at the close of a long period of public service, it brings me face to face with my constituents. In a different condition of the country, I could not decline the opportunity of reviewing the relations between us, — of showing, at least, how you took me from private station, all untried, and gave me one of your highest trusts, and how this trust was enhanced by the generosity with which you sustained me against obloquy and vindictive assault, especially by your unparalleled indulgence to me

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throughout a protracted disability, — and perhaps, might I be so bold, of presenting for your consideration some sketch of what I have attempted, conscious, that, if not always successful, I have been at all times faithful to cherished convictions, and faithful also to your interests, sparing nothing of time or effort, and making up by industry for any lack of ability, so that, during a service of more than eleven years, I have never once visited home while Congress was in session, or been absent for a single day, unless when suffering from that disability to which I have referred, and during the session which has just closed, filled with most laborious duties from beginning to end, I was not out of my seat a single hour. But this is no time for such a review. I have no heart for it, while my country is in danger. And yet I shall not lose the occasion to challenge the scrutiny of all, even here in this commercial metropolis, where the interests of business are sometimes placed above all other interests. Frankly and fearlessly I make my appeal. In all simplicity, I ask you to consider what I have done as your servant, whether in the Senate or out of the Senate, in matters of legislation or of business. If there is any one disposed to criticize or complain, let him be heard. Let the whole record be opened, and let any of the numerous visitors who have sought me on business testify. I know too well the strength of my case to shrink from any inquiry, even though stimulated by the animosity of political warfare.[1]

[1] In the delivery of the speech Mr. Sumner was interrupted here by an inquiry from the audience: "What about that vacant chair?" Cries answered: "Put him out!" The Voice: "He challenges inquiry. I ask him, What about the vacant chair?" Repeated cries: "Put him out!" Mr. Sumner: "Let him stay. The gentleman asks about the vacant chair. I refer him to the history of my country for answer." [*Tremendous applause.*]

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But there are two accusations, often repeated, to which I reply on the spot; and I do so with less hesitation, because the topics are germane to this debate. The first is, that from my place in the Senate I early proclaimed Slavery to be Barbarism. Never shall the cause of Freedom go by default, if I can help it; and I rejoice, that, on that occasion, in presence of the slaveholding conspirators vaunting the ennobling character of Slavery, I used no soft words. It is true, that, in direct reply to most offensive assumptions, I proclaimed Slavery barbarous in origin, barbarous in law, barbarous in all its pretensions, barbarous in the instruments it employs, barbarous in consequences, barbarous in spirit, barbarous wherever it shows itself, — while it breeds barbarians, and develops everywhere, alike in the individual and the society to which he belongs, the essential elements of barbarism. It is true, that, on the same occasion, I portrayed Slavery as founded in violence and sustained only by violence, and declared that such a wrong must, by sure law of compensation, blast the master as well as the slave, blast the land on which they live, blast the community of which they are part, blast the government which does not forbid the outrage, and the longer it exists, and the more completely it prevails, must its blasting influence penetrate the whole social system. Was I not right? Since then the testimony is overwhelming. A committee of the Senate has made a report, extensively circulated, on the barbarities of this Rebellion. You know the whole story to which each day testifies. It is in some single incident that you see the low-water mark of social life; and I know nothing in which the barbarism of Slavery is more completely exhibited than in the fate of our brave

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soldiers, dug up from honorable graves, where at last they had found rest, that their bones might be carved into keepsakes and their skulls into drinking-cups to gratify the malignant hate of Slave-Masters.

The other accusation is similar in character. It is said that I have too often introduced the Slavery Question. At this moment, seeing what Slavery has done, I doubt if you will not rather say that I have introduced it too seldom. If, on this account, I neglected any single interest of my constituents, if I was less strenuous whenever foreign relations or manufactures or commerce or finances were involved, if I failed to take my part in all that concerns the people of Massachusetts and in all embraced within the manifold duties of a Senator, then, indeed, I might be open to condemnation. But you will not regret that your representative, faithful in all other things, was ever constant and earnest against Slavery, and that he announced from the beginning the magnitude of the question, and our duties with regard to it. Say what you will, the slave is the humblest and the grandest figure of our times. What humility! what grandeur! both alike illimitable! In his presence all other questions are so petty, that for a public man to be wrong with regard to him is to be wholly wrong. How, then, did I err? The cause would have justified a better pertinacity than I can boast. In the Senate of Rome, the elder Cato, convinced that peace was possible only by the destruction of Carthage, concluded all his speeches, on every matter of debate, by the well-known words: "But whatever you may think of the question under consideration, this I know, Carthage must be destroyed." I have never read that the veteran Senator was condemned for the constancy of his patriotic appeal. With

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stronger reason far, I, too, might always have cried, "This I know, Slavery must be destroyed," — *Delenda est Servitudo.* But, while seeking to limit and constrain Slavery, I never proposed anything except in strictest conformity with the Constitution; for I always recognized the Constitution as my guide, which I was bound in all respects to follow.[1]

Such are accusations to which I briefly reply. Now that we are all united in the policy of Emancipation, they become of little consequence; for, even if I were once alone, I am no longer so. With me are the loyal multitudes of the North, now arrayed by the side of the President, where, indeed, I have ever been.

If you will bear with me yet longer in allusions which I make with reluctance, I would quote, as my unanswerable defence, the words of Edmund Burke, when addressing his constituents at Bristol.

"And now, Gentlemen, on this serious day, when I come, as it were, to make up my account with you, let me take to myself some degree of honest pride on the nature of the charges that are against me. I do not here stand before you accused of venality or of neglect of duty. It is not said, that, in the long period of my service, I have in a single instance sacrificed the slightest of your interests to my ambition or to my fortune. It is not alleged, that, to gratify any anger or revenge of my own or of my party, I have had a share in wronging or oppressing any description of men, or any one man in any description. No! the charges against me are all of one kind, — that I have pushed the principles of general justice and benevolence too far, — further than a

[1] Here the same voice that had already interrupted said: "Without reservation?" Mr. Sumner replied: "Yes, without reservation."

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cautious policy would warrant, and further than the opinions of many would go along with me. In every accident which may happen through life, in pain, in sorrow, in depression, and distress, I will call to mind this accusation, and be comforted." [1]

Among the passages in eloquence which can never die, I know none more beautiful or heroic. If I invoke its protection, it is with the consciousness, that, however unlike in genius and fame, I am not unlike its author in the accusations to which I have been exposed.

Fellow-citizens, a year has passed since I addressed you; but, during this time, what events for warning and encouragement! Amidst vicissitudes of war, the cause of Human Freedom has steadily and grandly advanced, — not, perhaps, as you could desire, yet it is the only cause which has not failed. Slavery and the Black Laws all abolished in the national capital; Slavery interdicted in all the national territory; Hayti and Liberia recognized as independent republics in the family of nations; the slave-trade placed under the ban of a new treaty with Great Britain; all persons in the military and naval service prohibited from returning slaves, or sitting in judgment on the claim of a master; the slaves of Rebels emancipated by coming within our lines; a tender of compensation for the abolition of Slavery: such are some of Freedom's triumphs in the recent Congress. Amidst all doubts and uncertainties of the present hour, let us think of these things and be comforted. I cannot forget, that, when I last spoke to you, I urged the liberation of the slaves of Rebels,

[1] Speech at Bristol, previous to the Election, 1780: Works (London, 1801), Vol. IV. pp. 72, 73.

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and especially that our officers should not be permitted to surrender back to Slavery any human being seeking shelter within our lines; and I further suggested, if need were, a Bridge of Gold for the retreating Fiend. And now all that I then proposed is embodied in the legislation of the country as the supreme law of the land.

It was as *a military necessity* that I urged these measures; it is as a military necessity that I now uphold them, and insist upon their completest and most generous execution, so that they shall have the largest scope and efficacy. Not as Abolitionist, not as Antislavery man, not even as philanthropist, — if I may claim that honored name, — do I now speak. I forget, for the moment, all the unutterable wrong of Slavery, and all the transcendent blessings of Freedom; for they do not belong to this argument. I think only of my country menaced by rebellion, and ask how it shall be saved. But I have no policy, no theory, no resolutions to support, — nothing which I will not gladly abandon, if you will show me anything better.

> "If you know better rules than these, be free,
> Impart them; but if not, use these with me."[1]

And now, what is the object of the war? This question is often asked, and the answer is not always candid. It is sometimes said that it is to abolish Slavery. Here is a mistake, or a misrepresentation. It is sometimes said, in cant language, that the object is "the Constitution as it is and the Union as it was." Here is another mistake or misrepresentation, which becomes more

[1] Horace, Epist. I. vi. 67, 68.

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offensive when it is known that by "the Constitution as it is" is meant simply the right to hold and hunt slaves, and by "the Union as it was" is meant those halcyon days of Proslavery Democracy, when the ballot-box was destroyed in Kansas, when freedom of debate was menaced in the Senate, and when chains were put upon the Boston Court-House. Not for any of these things is this war waged. Not to abolish Slavery or to establish Slavery, but simply to put down the Rebellion. And here the question occurs, How can this object be best accomplished?

In discussing this question with proper frankness, I shall develop and vindicate that policy of which the President's Proclamation is the herald, and to which his Administration is publicly pledged. The Administration belongs to us, and we belong to the Administration. My aim is to bring the Administration and the people nearer together, by showing the ground on which they must meet, for the sake of the Republic, and that it may not perish beneath felon blows.

I start, of course, with the assumption, in which you will all unite, that this war must be brought to a close. It must not be allowed to drag its slow length along, bloody, and fruitless except with death. Lives enough have been sacrificed, graves enough have been filled, homes enough have been emptied, patriot soldiers enough have been sent back halt and maimed with one leg or one arm, tears enough have been shed. Nor is this all; treasure enough has been expended. It is common to think only of the national debt, now swelling to unnatural proportions; but this will be small by the side of the fearful sum-total of loss from destruction of prop-

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erty, derangement of business, and change of productive to unproductive industry. Even if we do not accept the conclusions of an ingenious calculator who places this damage at ten thousand millions of dollars, we must confess that it is an immensity, which, like the numbers representing sidereal distances, the imagination refuses to grasp. To stop this infinity of waste there must be peace; to stop this cruel slaughter there must be peace. In the old wars between King and Parliament, which rent England, the generous Falkland cried from his soul, "*Peace! peace!*" and history gratefully records his words. Never did he utter this cry with more earnestness than I do now. But how shall the blessing be secured?

I start with the further assumption, that there can be no separation of these States. Foreign nations may predict what Rebels threaten, but this result is now impossible. Pray, good Sirs, where will you run the boundary line? Shall it be the cotton limit? Shall it embrace Virginia in whole or part? How about Tennessee? Kentucky? Or shall it be the most natural line of cleavage, the slave line? And how will you adjust the navigation of the Mississippi, and the whole question of Slavery? And what principles, commercial and political, shall be established between the two Governments? But do not deceive yourselves into the idea that peace founded on separation can be anything but a delusion and a snare. Separation is interminable war, "never ending, still beginning," — worse than the forays which ravaged the Scottish border, or the Tartar invasions which harassed China until its famous wall was built, fifteen hundred miles long, and so thick that six horsemen ride upon it abreast. War will be chronic,

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and we must all sleep on our arms. Better that it be all at once, rather than diffused over a generation. If blood must be shed, better for a year than for an age.

But if there be anything in the Monroe doctrine, if we could not accommodate ourselves to the foothold of Europe upon this continent, how can we recognize on our borders a malignant Slave empire, with Slavery as its boasted corner-stone, constituting what Shakespeare calls "an impudent nation," embittered and enraged against us, without law, without humanity, and without morals, — a mighty Blue-Beard's Chamber, — an enormous House of Ill-Fame? We would not allow the old Kingdom of the Assassins to be revived at our side. But wherein are our Rebels better?

Nor can you recognize such separation without delivering over this cherished Union to chaos. If the Rebel States are allowed to go, what can be retained? It is true, there can be no constitutional right to break up the Constitution, but the precedent unhappily recognized would unsettle this whole fabric of States. Therefore, fellow-citizens, there can be no separation. But how to prevent it, — in other words, how to hamstring the Rebellion and conquer a peace, — this is the question.

The Rebels are in arms, aroused, at home, on their own soil, and resolved never to yield. Nothing less than independence will satisfy them: if the war continues, I know not that they will be content with this. Two policies are presented on our side, — one looking primarily to Rebel conciliation, and the other looking primarily to Rebel submission. Both have the same elements, al-

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though in diverse order. The first begins with conciliation in order to end with Rebel submission, which is cart before horse. The second begins with Rebel submission in order to end with conciliation. The question is simply this, — Whether conciliation shall precede or follow submission? Conciliation is always proper, where possible; but, at this stage, it is obviously impossible. If anybody believes that now any word or act of conciliation, any forbearance on our part, any hesitation in exercise of the sternest Rights of War, will help us to victory or contribute to put down the Rebellion, let me not enter into that man's counsels, for they can end in nothing but shame and disaster. I find that they who talk most against coercion of Rebels and coercion of States are indifferent to the coercion of four million people, men, women, and children, to work without wages under discipline of the lash. Without hesitation I say that the Rebels must be subdued, — call it coercion or subjugation, whichever you please: our war has this direct object. With victory will come conciliation, clemency, amnesty. But first victory.

To obtain victory, two things are needed: first, a precise comprehension of the case, and, secondly, vigor of conduct. One will not do without the other. It will not be enough to comprehend the case, unless you are ready to treat it with corresponding vigor. And it will not be enough to have vigor, unless you discern clearly how the case shall be treated. To this end there must be statesmen as well as generals.

The first duty of the good physician is to understand the condition of his patient, — whether it is a case of medicine or surgery, of cutaneous eruption or deep-

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seated cancer. This is called diagnosis. Of course, if this fails, the whole treatment will be a failure. But the statesman, in all the troubles of his country, has the same preliminary duty. He, too, must see whether it is a case for medicine or surgery, of cutaneous eruption or deep-seated cancer. And since all that he does must be precisely according to his judgment of the case, error here must be equally fatal.

Next to comprehension of the case is vigor in conduct, which is more needful in proportion as the case becomes desperate. This must be not only in the field, but also in council, — not only against the serried front of the enemy, but against those more fatal influences that come from lack of comprehension or lack of courage. The same vigor we require in our generals must be required also in our statesmen, — the same spirit must animate both. No folding of the hands, no putting off till to-morrow what can be done to-day, no hesitation, no timidity, but *action, action, action,* straightforward, manly, devoted action. It is easy to see that this is required in the field; but it is no less required in every sphere of the Government, from President to paymaster.

In war there are some who content themselves with triumphs of prudence instead of triumphs of courage, and spend much time in trying how not to be beaten, instead of how to beat. They are content to forego victory, if they can escape defeat, forgetting that Fabius was only a defender and not a conqueror, that a policy fit at one time may be unfit at another, that a war waged in an enemy's country cannot be defensive, nor can it prevail by any procrastination. People at

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home, on their own soil, can afford to wait. Every month, every week, every day is an ally. But we cannot wait. No moment must be spared. Not in this way battled those ancient commanders called "The Two Thunderbolts of War." Not in this way did Napoleon defeat the Austrian forces at Marengo, and shatter the Prussian power on the field of Jena.

But there are "thunderbolts" of the cabinet as well as of the field. The elder Pitt, who was only a civilian, infused his own conquering soul into the British arms, making them irresistible; and the French Carnot, while a member of the Committee of Public Safety, was said to have organized victory. Such is the statesmanship now needed for us. And there must be generals who will carry forward all that the most courageous statesmanship directs.

Armies and men we have of rarest quality. Better never entered a field or kept step to drum-beat. Intelligent and patriotic, they have left pleasant homes, to offer themselves, if need be, for their country. They are no common hirelings, mere food for powder, but generous citizens, who have determined that their country shall be saved. Away in camp, or battle, or hospital, let them not be forgotten. But, better than gratitude even, we owe them the protection which comes from good generals and courageous counsels. O God! let them not be led to useless slaughter like sheep, nor be compelled to take the hazard of death from climate and exposure, as well as from ball and bayonet, without giving them at once all the allies which can be rallied to their support. In the name of humanity, and for the sake of victory, I make this appeal. But the loyal

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everywhere are allies. And does loyalty depend upon color? Is it skin or heart that we consult? Do you ask the color of a benefactor? As I listen to people higgling on the question how to treat Africans coming to our rescue, I am reminded of that famous incident, where the Emperor of Austria, driven back by the Turks, three hundred thousand strong, and besieged in Vienna until at the point of surrender, was suddenly saved by the gallant Sobieski of Poland. The Emperor, big with imperial pride, thought chiefly of his own supereminent rank, — as a Proslavery Democrat thinks of his, — and hesitated how to receive his Polish benefactor, who was only an elected king, when the Austrian commander said: "Sire, receive him as the saviour of your empire." The Emperor gave to his saviour hardly more than a cold salute; and we are told to imitate this stolid ingratitude.

Wherever I turn in this war, I find the African ready to be our saviour. If you ask for strategy, I know nothing better than that of the slave, Robert Small, who brought the Rebel steamer Planter with its armament out of Charleston, and surrendered it to our Commodore as prize of war. If you ask for successful courage, I know nothing better than that of the African, Tillman, who rose upon a Rebel prize-crew, and, overcoming them, carried the ship into New York. If you ask for heroism, you will find it in that nameless African on board the Pawnee, who, while passing shell from the magazine, lost both his legs by a ball, but, still holding a shell, cries out, "Pass up the shell, — never mind me; my time is up." If you ask for fidelity, you will find it in that slave, also without a name, who pointed out the road of safety

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to the harassed, retreating Army of the Potomac. And if you ask for evidence of desire for freedom, you will find it in the little slave-girl, journeying North, whom Banks took up on his cannon.

It is now as at earlier stages of our history. The African is performing his patriotic part, so far as you will let him. At the famous massacre, when the first blood of the Revolution reddened the ice-clad pavements of Boston, Crispus Attucks, an African, once a slave, was among the victims. At Bunker Hill, where our homely troops first stood against British valor, Peter Salem, also an African once a slave, was conspicuous for courage, to the cost of the royal officer who scaled the rampart, so that History names him with honor, and Art presents him in the fore-front of the battle. Trumbull has portrayed the scene. So long as that picture endures, so long as that historic battle haunts the memory, you cannot forget the African fellow-soldier of Prescott and Warren. But there are others like him, ready now to do the same service.

Not for the first time do I here make this appeal. Constantly I have made it before the people and in the Senate, by speech and proposition. I give an instance, being a resolution in the Senate, offered May 26th of this year.

"*Resolved*, That, in the prosecution of the present war for the suppression of a wicked Rebellion, the time has come for the Government of the United States to appeal to the loyalty of the whole people everywhere, but especially in the Rebel districts, and to invite all, without distinction of color, to make their loyalty manifest by ceasing to fight or labor for the Rebels, and also by rendering every assistance in

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their power to the cause of the Constitution and the Union, according to their ability, whether by arms, or labor, or information, or in any other way.; and since protection and allegiance are reciprocal duties, dependent upon each other, it is the further duty of the Government of the United States to maintain all such loyal people, without distinction of color, in their rights as *men*, according to the principles of the Declaration of Independence."[1]

I need not stop to discuss this resolution. You know my opinions, and how I have pressed them in debate. You may also be assured that I have never failed to present them in that quarter where it was peculiarly important they should prevail. On the 4th of July of the present year, in a personal interview with the President, I said: "You need more men, not only at the North, but at the South, in the rear of the Rebels: you need the slaves. Say the word, and you can give to our armies this invaluable alliance, — you can change the rear-guard of the Rebellion into the advance-guard of the Union. It is now the 4th of July. You can make this day more sacred and more historic, and do for it better than the Continental Congress." Had Emancipation been spoken at that time, I cannot doubt that the salvation of our country would have begun thus earlier. Of course, such a word would have been a blast from the war-trumpet, justified as a military necessity, according to examples of history and the heart of man. And such a blast the President has now blown.

But it is said that all appeal to slaves is unconstitutional; and it is openly assumed that rebels making

[1] Congressional Globe, 37th Cong. 2d Sess., p. 2342; Senate Journal, p. 527.

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war on the Constitution are not, like other public enemies, beyond its protection. Why this peculiar tenderness, whenever Slavery is in question? Battalions may be shot down, and property taken without due process of law, but Slavery must not be touched. The ancient Egyptians, when conquered, submitted easily to loss of life and property; but when a Roman soldier happened to kill a cat in the streets, they rose and tore him limb from limb with such violent excitement that the generals overlooked the outrage for fear of insurrection. Slavery is our sacred cat, not to be touched without fear of insurrection. Sir, I am tired and disgusted at hearing the Constitution perpetually invoked for Slavery. According to certain authorities, the Constitution is all for Slavery and nothing for Freedom. I am proud to own that with me just the reverse is the case. There are people who keep apothecaries' scales, in which they nicely weigh everything done for Freedom. I have no such scales, where Freedom is in question, nor do I hesitate to say that in a case of Freedom all such nicety is unconstitutional. The Constitution is not mean, stingy, and pettifogging, but open-handed, liberal, and just, inclining always in favor of Freedom, and enabling the Government, in time of war, not only to exercise any Rights of War, including liberation of slaves, but also to confer any largess or bounty — it may be of money, or, better still, of freedom — for services rendered. I do not dwell now on the unanswerable argument by which John Quincy Adams has placed this power beyond question.[1] Whatever the provisions of the Constitution for protection of the citizen, they are inapplicable to what is done against a public enemy.

[1] See, *ante*, Vol. VI. pp. 20-23.

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The law of an Italian city prohibited the letting of blood under penalty of death; but this did not doom the surgeon who opened a vein to save the life of a citizen. In war there is no constitutional limit to the activity of the Executive, except the emergency. The safety of the people is the highest law. There is no blow the President can strike, there is nothing he can do against the Rebellion, that is not constitutional. Only inaction can be unconstitutional.

Some there are who would sacrifice the lives of our Northern liberty-loving people, and, if this does not save the Union, then strike Slavery. This again is putting cart before horse. Slavery should be struck to save precious blood. The life of a single patriot is worth more than all Slavery; ay, more, it has stronger securities in the Constitution.

Search the writers on the Law of Nations, and you will find the appeal to slaves justified. Search history, whether in ancient or modern times, and you will find it justified by example. In our Revolution, this appeal was made by three different British commanders, — Lord Dunmore, Sir Henry Clinton, and Lord Cornwallis. I do not stop for details. That their appeal was not unsuccessful is evident from concurring testimony. Its propriety was admitted by Jefferson, while describing his own individual losses from Cornwallis.

"He destroyed all my growing crops of corn and tobacco; he burned all my barns, containing the same articles of the last year, having first taken what corn he wanted; he used, *as was to be expected*, all my stock of cattle, sheep, and hogs, for the sustenance of his army, and carried off all the horses capable of service. . . . . *He carried off, also, about thirty*

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slaves. Had this been to give them freedom, he would have done right. . . . . From an estimate I made at that time, on the best information I could collect, I supposed the State of Virginia lost, under Lord Cornwallis's hands, that year, about thirty thousand slaves."[1]

It would be difficult to imagine testimony stronger. Here was a sufferer, justly indignant for himself and his State; but he does not doubt that an enemy would do right in carrying off slaves to give them freedom.

The enterprise of Lord Dunmore deserves more particular mention. His proclamation was thus explicit: —

"And I do hereby further declare all indented servants, negroes or others (appertaining to rebels), free, that are able and willing to bear arms, they joining his Majesty's troops as soon as may be, for the more speedily reducing this colony to a proper sense of their duty to his Majesty's crown and dignity."[2]

Its effect is amply attested. Edmund Pendleton writes to Richard Henry Lee: "Letters mention that slaves flock to him in abundance; but I hope it is magnified."[3] Lord Dunmore reports to his Government at home: "I have been endeavoring to raise two regiments here, — one of white people, the other of black. The former goes on very slowly, but the latter very well."[4] Nothing shows the consternation more than a letter of Washington, who, after saying that "Lord Dunmore should be instantly crushed, if it takes the force of the whole colony to do it," proceeds: —

[1] Letter to Doctor Gordon, July 16, 1788: Writings, Vol. II. pp. 426, 427.
[2] November 7, 1775: American Archives, Fourth Series, Vol. III. col. 1385.
[3] November 27, 1775: Ibid., Vol. IV. col. 202.
[4] Letter to the Secretary of State, March 30, 1776: Ibid., Fifth Series, Vol. II. col. 160.

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"Otherwise, like a snow-ball in rolling, his army will get size, — some through fear, some through promises, and some through inclination joining his standard: but that which renders the measure indispensably necessary is the negroes; for, if he gets formidable, numbers of them will be tempted to join who will be afraid to do it without."[1]

To these authorities add the exclamation of Zubly, in the Continental Congress from Georgia: —

"I look on the plan we heard of yesterday to be vile, abominable, and infernal; but I am afraid it is practicable."[2]

Naturally the representative of slave-masters did not approve it. It is enough that he thought it "practicable."

Several years later, Lord Dunmore reiterated his sentiments and vindicated his appeal. This was at Charleston, where he addressed a communication to Sir Henry Clinton at New York, under date of February 2, 1782, in which he says: —

"Every one that I have conversed with think — and, I must own, my own sentiments perfectly coincide with theirs — that the most efficacious, expeditious, cheapest, and certain means of reducing this country to a proper sense of their duty is in employing the blacks, who are, in my opinion, not only better fitted for service in this warm climate than white men, but they are also better guides, may be got on much easier terms, and are perfectly attached to our sovereign. And by employing them, you cannot devise a means more effectual to distress your foes, not only by depriving them of their property, but by depriving them of their labor. You

[1] Letter to Joseph Reed, December 15, 1775: Life and Correspondence of Joseph Reed, Vol. I. p. 135.

[2] John Adams, Notes of Debates in the Continental Congress, October 6, 1775: Works, Vol. II. p. 458.

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in reality deprive them of their existence; for without their labor they cannot subsist." [1]

These examples, with all this testimony, vindicate our Proclamation.

There are other instances nearer our own day. During the last war with England, Admiral Cochrane, commander-in-chief of the British squadron on the American station, was openly charged with inviting slaves of our planters to join the British standard, although the phraseology of his proclamation was covert, offering "all those who might be disposed to emigrate from the United States" service under his Majesty, or encouragement as "free settlers" in the British possessions.[2] Something similar has been anticipated by our own Government on the coast of Florida, as appears from an official report.

"In the event of war with either of the great European powers possessing colonies in the West Indies, there would be danger of the Peninsula of Florida being occupied by blacks from the islands. A proper regard to the security of our Southern States requires that prompt and efficient measures be adopted to prevent such a state of things." [3]

Here is distinct recognition of danger from black soldiers, if employed against us.

Admitting that an appeal to slaves is constitutional, and also according to examples of history, it is said that

[1] An Historical Research, by George Livermore, p. 187.

[2] Proclamation, dated at Bermuda, April 2, 1814. An Exposition of the Causes and Character of the Late War, by A. J. Dallas, (Philadelphia, 1815,) p. 70. Life and Writings of A. J. Dallas, by his Son, G. M. Dallas, Appendix, No. 5, p. 356.

[3] Report of Quartermaster-General, November 15, 1841: Senate Documents, 27th Cong 2d Sess., No. 1, p. 110.

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it will be unavailing, for the slaves will not hearken to it. Then why not try? It can do no harm, and will at least give us a good name. But, if not beyond learning from the enemy, we shall see that the generals most hated on our side, and, like Adams and Hancock in the Revolution, specially excepted from pardon, are Phelps and Hunter, plainly because the ideas of these generals are more dreaded than any battery or strategy. Of this be assured: the opponents of this appeal are not anxious because it will fail; only because it may be successful do they oppose it. They fear it will reach the slaves, rather than not reach them.

Look at it candidly, and you cannot deny that it must produce an effect. It is idle to say that its influence will be bounded by our jurisdiction. When the mill-gates are lifted, all the water above, in its most distant sources, starts on its way; and so will the slaves. Remote kingdoms trembled at the Pope's excommunication and interdict, and an elegant historian has described the thunders of the Vatican intermingling with the thunders of war. Christendom shook when Luther nailed his theses on the church-door of Wittenberg. An appeal to our slaves will be hardly less prevailing. Do you ask how it would be known? The fall of Troy, long before our telegraph, was flashed by beacon-fires from Mount Ida to Argos. The slave telegraph is not as active as ours, but it is hardly less sure. It takes eight days for a despatch from Fortress Monroe to the Gulf of Mexico. The glad tidings of Freedom will travel with the wind, with the air, with the light, quickening and inspiring the whole mass. Secret societies of slaves, already formed, will be among the operators. That I do not speak without authority, please

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listen to the words of John Adams, taken from his Diary, under date of 24th September, 1775.

"These gentlemen [Georgia delegates] give a melancholy account of the state of Georgia and South Carolina. They say, that, if one thousand regular troops should land in Georgia, and their commander be provided with arms and clothes enough, and proclaim freedom to all the negroes who would join his camp, twenty thousand negroes would join it from the two provinces in a fortnight. The negroes have a wonderful art of communicating intelligence among themselves: it will run several hundreds of miles in a week or fortnight."[1]

This is testimony. The destructive avalanche of the Alps is sometimes started by the winding of a horn, and a structure so irrational as Slavery will tremble at a sound.

From such appeal two things must ensue. First, the slaves will be encouraged in loyalty; and, secondly, the masters will be discouraged in disloyalty. Slave labor, which is the mainspring and nursery of Rebel supplies, without which the Rebellion must starve, will be disorganized, while a panic spreads among slave-masters absent from their homes. The most audacious Rebels will lose their audacity, and, instead of hurrying forward to deal parricidal blows at their country, will hurry backward to defend their own firesides. The Rebellion will lose its power. It will be hamstrung.

That such a panic would ensue is attested by the confession of the South Carolina delegation in the old Continental Congress, as appears by its Secret Journal, under date of 29th March, 1779, that this State was

[1] Works, Vol. II. p. 428.

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"*unable* to make any effectual efforts with militia, by reason of the great proportion of citizens necessary to remain at home to prevent insurrections among the negroes, and to prevent the desertion of them to the enemy."[1] It is attested, also, by the concurring testimony of Southern men in other days, especially in those remarkable words of John Randolph: "The night-bell never tolls for fire in Richmond that the frightened mother does not hug her infant the more closely to her bosom, not knowing what may have happened."[2] It is attested also by the actual condition of things when John Brown entered Virginia, as pictured in familiar words: —

> "He captured Harper's Ferry
> With his nineteen men so few,
> And he frightened Old Virginny
> Till she trembled through and through."

Asserting the efficacy of this appeal, I ground myself on no visionary theories or vain hopes, but on the nature of man and authentic history. To doubt its efficacy is to doubt that man is man, with a constant desire for liberty as for life, and it is also to doubt the unquestionable instances in our own history where this desire has been displayed by African slaves. That a government exposed to the assaults of a merciless barbarian foe should so long reject this irresistible alliance is among questions to excite the astonishment of future ages.

What, then, are the reasons alleged against this appeal? They all resolve themselves into objections of

[1] Secret Journals, Vol. I. p. 108. *Ante*, Vol. III. p. 403.

[2] Speech in the House of Representatives of the United States, December 10, 1811: Hildreth's History of the United States, Vol. VI. p. 269; Annals of Congress, 12th Cong. 1st Sess., col. 451.

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fact. The President, by his Proclamation, has already answered them practically; but I will take them up in detail.

(1.) The first objection, and most often repeated, is one which it is difficult to treat with patience. We are told that the appeal will offend the Border States, and that, in this moment of trial, we must do as they tell us. It is, of course, slave-masters who speak for the Border States; and permit me to say, such persons, continuing to swear by Slavery, are not competent witnesses. Believing in Slavery, wedded to Slavery, they are as incompetent to testify as husband and wife are incompetent to testify for each other. Just in proportion as we follow them we are misled, and we shall continue to be misled so long as we follow them. Their influence is perpetual paralysis. Nobody can counsel safely at this moment who adheres to Slavery, or fails to see Slavery as the origin and mainspring of the Rebellion. It is well known that for a long time in England all efforts against Slavery, led by Wilberforce and Clarkson, were discountenanced and opposed by the slave-masters in the distant islands. Whatever the proposition, whether to abridge, to mitigate, or ameliorate, there was always one steady dissent. Put not your trust in slave-masters, — do not hearken to their promises, — do not follow their counsels. Such is the plain lesson of English history, of French history, of Dutch history, of every country which has dealt with this question, — ay, of Russian history at this very moment, — and such, also, is the positive caution of English statesmen. On this point we have the concurring testimony of three names, each of which is an authority. It is all embodied in a brief passage of a speech by Lord Brougham.

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"I entirely concur in the observation of Mr. Burke, repeated and more happily expressed by Mr. Canning, that the masters of slaves are not to be trusted with making laws upon Slavery, — that nothing they do is ever found effectual, — and that, if by some miracle they ever chance to enact a wholesome regulation, it is always found to want what Mr. Burke calls *the executory principle*, — it fails to execute itself." [1]

These are emphatic words, and as often as I am reminded of the opinions of Slave-Masters on our present duties, when Slavery is in question, I think of them as a solemn warning, confirmed by all the teachings of experience in our own country, early and late.

(2.) Another objection is, that officers in our army will fling down their arms. Very well, — let the traitors fling down their arms: the sooner, the better. They are unworthy to bear arms, and should be delivered up to the hissing and execration of mankind. But I will not dishonor officers with the commission of the United States by such imputation on their loyalty and common sense. As officers they must know their duty too well, and as intelligent men they must know that the slaves are calculated to be their best and surest allies.

(3.) Another objection is, that Slavery is a "side issue," not to be touched until the war is ended. But these wise objectors forget that it is precisely in order to end the war that Slavery is to be touched, and that, when they oppose the effort, they make a "side issue" in its behalf, calculated to weaken the national arm

[1] Speech in the House of Lords, on the Immediate Emancipation of the Negro Apprentices. February 20, 1838: Works, Vol. X. p. 274.

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(4.) Another objection has its origin in pity, that the Rebels may be saved from a slave insurrection. God forbid that I should fail in any duty of humanity, or tenderness even; but I know no principle of war or of reason by which our Rebels should be saved from the natural consequences of their own conduct. When they rose against a paternal Government, they set the example of insurrection which has carried death to innumerable firesides. They cannot complain, if their slaves, with better reason, follow it. According to an old law, bloody inventions return to plague the inventor. But this whole objection proceeds on a mistaken idea of the African slave. The story of San Domingo, so often quoted against him, testifies to his humanity. Only when Napoleon, in an evil hour, sought to reënslave him, did those scenes of blood occur, which exhibit less the cruelty of the slave than the atrocious purpose of the white man. The African is not cruel, vindictive, or harsh, but gentle, forgiving, and kind. Such is authentic history. Nor does it appear, when the slaves left their masters, on the appeal of the British commanders, during our Revolution, that they were guilty of any excess. It is true that labor was disorganized, and the whole community weakened; and this is what we seek to accomplish in the Rebel States.

(5.) And yet one more objection is sometimes advanced. It is said that an appeal to the slaves will make them overflow into the North, where they will compete with other labor. This ill-considered and trivial objection subordinates the suppression of the Rebellion to a question of labor, and, by a "side issue," diverts attention from the great object at heart. But it becomes absurd, when you consider, as every candid observer

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must admit, that no such objection can arise. There is no danger of any such overflow. It is precisely the pressure of Slavery, and not the license of Freedom, that causes overflow. If Slavery were removed, the Africans would flow back, instead of overflowing here. The South is their natural home, and there they will go when justice at last prevails.

Such are the objections of fact, so far as any exist within my knowledge. If any other has been made, I do not know it. I ask you frankly, have I not answered them?

But, fellow-citizens, I shall not leave the argument at this stage. It is not enough to show that slaves can render important assistance, by labor, by information, or by arms, and that there is no reasonable objection to calling upon them, with other loyalists, in support of the Union. The case is stronger still. *Without the aid of the slaves this war cannot be ended successfully.* Their alliance is, therefore, a necessity. In making this assertion I know well the responsibility I assume, nor do I assume it lightly. But the time has come when the truth must be told. Let me be understood. As war is proverbially uncertain, I cannot doubt that fortune will again light upon our arms. The force of the Rebellion may be broken even without appeal to the slaves. But I am sure that with the slaves our victory will be more prompt, while without them it can never be effectual completely to crush out the Rebellion. It is not enough to beat armies. Rebel communities, envenomed against the Union, must be restored, and a wide-spread region quieted. This can be done only by removal of the disturbing cause, and the consequent assimilation

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of the people, so that no man shall call another master. If Slavery be regarded as a disease, it must be extirpated by knife and cautery; for only in this way can the healthful operations of national life be regained. If regarded as a motive, it must be expelled from the system, that it may no longer exercise its malign influence. So long as Slavery continues, the States in which it exists will fly madly from the Union, but with its destruction they will lose all such tendency. The Slave States, by the influence of Slavery, are now *centrifugal;* but with Slavery out of the system, they will be *centripetal.* Such is the law of their being. And it should be our present policy to take advantage of this law for the benefit of the Union. Nay, from the necessity of the case, this must be done.

A united people cannot be conquered. Defeated on the battle-field, they will remain sullen and revengeful, ready for another rebellion. This is the lesson of history. Even Hannibal, after crushing in the field all the armies of Rome, and ranging at will throughout Italy, was obliged to confess the inadequacy of his triumphs, while he appealed for help to the subjects of Rome, exciting them to insurrection, and arousing them against the Roman power. To this long-cherished plan were directed all the energies he could spare from battle, believing that in this way his enemy could be brought under a double fire. But it is known that the people of the Slave States are not wholly united, and that among them are large numbers ready at call to uphold the Union. From the beginning of the war, we have assumed, as an element of strength, the presence there of large numbers devoted to the Union, ready at

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the proper moment to coöperate with the national forces. Yet most of these faithful Unionists are not white. The Unionists of the South are black. Let these be rallied, and the Rebellion will be exposed not only to a fire in front, but also to a fire in the rear. The two together are necessary to the operations of war. The Union army thus far is like a single blade of a pair of scissors, which, though of choicest steel with sharpest edge, must be comparatively useless. Let the other blade be conjoined, and the instrument will be perfect. The scissors of Fate could not cut more surely.

Is not our duty clear? And is not the President completely vindicated? By Emancipation we not only hasten the war to a close, but we give it an effective *finality*, preventing it from breaking forth anew, which can be obtained in no other way. The heads of the hydra will be extirpated and the monster destroyed, never more to show itself. Without Emancipation the whole contest is delivered over to present uncertainty, while the future is left to glare with all the horrors of civil strife unsuppressed. The last chapter of "Rasselas" is entitled "The Conclusion, in which Nothing is Concluded"; and this will be the proper title for the history of this war, if Slavery is allowed to endure. If you would trample down the Rebellion, you must trample down Slavery; and, believe me, it must be completely done. Among the terrible pictures in the immortal poem of Dante, where crime on earth is portrayed in so many fearful punishments, is that of Caiaphas, high-priest of the Jews, who, as penalty for his sacrifice of the Saviour, was stretched on the floor of Hell, where all who passed must tread on him.

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"Naked athwart this pathway he must lie,
Condemned, as thou perceiv'st, to undergo
The weight of every one who passes by." [1]

Such should be the final fate of Slavery, naked and dishonored, stretched where all may tread upon it. Never can the Rights of War be employed more justly than to create this doom.

It was easy to see from the beginning that the Rebellion had its origin in Slavery, — that without Slavery it never could have broken forth, — that, when begun, it was continued only through Slavery, — that Slavery was at once the curse that pursued, the principle that governed, and the power that sustained, — and the Oligarchy of slave-masters, three hundred and fifty thousand all told, were the criminals through whom all this direful wickedness was organized and waged. Such is the unquestionable diagnosis of the case, which history will recognize, and a wise statesmanship must have seen promptly. Not to see Slavery in this guilty character was a mistake, and grievously have we answered for it. All are agreed now that Buchanan played into Rebel hands, when, declaring that there can be no coercion of a State, he refused to touch the Rebellion. Alas! alas! we, too, may play into Rebel hands, when, out of strange and incomprehensible forbearance, we refuse to touch Slavery, which is the very life of the Rebellion. Pardon these allusions, made in no spirit of criticism, but simply that I may accumulate new motives for that Proclamation which I rejoice to welcome as herald of peace.

There are many generals already in the field, — up-

[1] Inferno, Canto XXIII. 118 - 120, tr. Brooksbank.

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wards of thirty major-generals, and two hundred brigadiers; but, meritorious and brave as they may be, there is a general better than all, whom the President now commissions, — I mean General Emancipation.

It is common to speak of God as on the side of the heavy battalions. Whatever the truth of this saying, it does not contain the whole truth. Heavy battalions are something, but they are not everything. Even if prevailing on the battle-field, which is not always the case, the victory they compel is not final. It is impotent to secure that tranquillity essential to national life. Mind is above matter, right is more than force, and it is vain to attempt conquest merely by matter or by force. If this can be done in small affairs, it cannot in large; for these yield only to moral influences. Napoleon was the great master of war, and yet, from his utterances at St. Helena, the legacy of his transcendent experience, comes this confession: "The more I study the world, the more am I convinced of the inability of *brute force* to create anything durable." And another Frenchman, of subtile thought and perfect integrity, whose name is linked forever with American institutions, De Tocqueville, has paid a similar tribute to truth. "Force," says he, "is never more than a transient element of success. A government only able to crush its enemies on the field of battle would very soon be destroyed." In these authoritative words of the warrior and the thinker there is warning not to put trust in batteries or bayonets, while an unconquerable instinct makes us confess that might cannot constitute right.

Let the war end on the battle-field alone, and it will be only in appearance that it will end, not in reality.

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Time will be gained for new efforts, and Slavery will coil itself to spring again. The Rebellion may seem to be vanquished, and yet it will triumph. The Union may seem to conquer, and yet it will succumb. The Republic may seem to be saved, and yet it will be lost, — handed over a prey to that injustice which, so long as it exists, must challenge the judgments of a righteous God.

Thus, for the sake of peace, which we all desire, do I now plead for Freedom, through which alone peace can be secured. Are you earnest for peace? then must you be earnest for Freedom also. Would you uphold the Union against treason? then must you uphold Freedom, without which bloody treason will flourish over us. But Freedom is adopted by Congress and proclaimed by the President as one of the agencies in the prosecution of the war. Therefore it must be maintained with all our souls and all our hearts and all our might. The hour of debate has passed, the hour of action has sounded. In opposing solemn Acts of Congress, which, according to the Constitution, are now the supreme law of the land, passed for the national defence, — in opposing the Proclamation of the President, — nay, in discouraging Freedom, — you are as bad as if you discouraged enlistments. It is through Freedom, as well as arms, that the war will be waged; and the same loyalty that supports the one is now due to the other. The discouragement of enlistments is recognized as seditious and traitorous; but the discouragement of this new force, adopted by the Government for the suppression of the Rebellion, is only another form of sedition and treason, which an indig-

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nant patriotism will spurn. Emancipation is now a war measure, to be sustained as you sustain an army in the field.

If the instincts of patriotism did not prompt this support, I should find a sufficient motive in that duty which we all owe to the Supreme Ruler, God Almighty, whose visitations upon our country are now so fearful. Not rashly would I make myself the interpreter of His will; and yet I am not blind. According to a venerable maxim of jurisprudence, "Whoso would have equity must do equity"; and God plainly requires equity at our hands. We cannot expect success while setting at nought this requirement, proclaimed in His divine character, in the dictates of reason, and in the examples of history, — proclaimed, also, in the events of this protracted war. Terrible judgments have fallen upon the country: plagues have been let loose, rivers have been turned into blood, and there is a great cry throughout the land, for there is not a house where there is not one dead; and at each judgment we seem to hear that terrible voice which sounded in the ears of Pharaoh: "Thus saith the Lord God of the Hebrews, Let my people go, that they may serve me." I know not how others are touched, but I cannot listen to the frequent tidings of calamity descending upon our arms, of a noble soldier lost to his country, of bereavement at the family hearth, of a youthful son brought home dead to his mother, without catching the warning, "Let my people go!" Nay, every wound, every sorrow, every hardship, all that we are compelled to bear in taxation, in want, in derangement of business, has a voice crying, "Let my people go!"

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be remembered as heroes through whom the Republic was saved and civilization established forever.

But there are duties elsewhere than in bloody conflict. Each of us, in his place at home, by his best efforts, can do something, not only to sustain the soldier in the field, but also to uphold that sublime edict which will be to the soldier both sword and buckler, while it gives to the conflict all the grandeur of a great idea. In this hour of trial let none fail. Above all, let none go over to the enemy, even should his tents for the moment be pitched in Faneuil Hall,[1] assured that there can be but two parties: the party of our country, with the President for its head, and Emancipation its glorious watchword; and the party of Rebellion, with Jefferson Davis for its head, and no other watchword than Slavery.

[1] What was called "The People's Convention" was to meet the next day in Faneuil Hall. See, *post*, Appendix p. 241.

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APPENDIX.

NOMINATION AND REËLECTION OF MR. SUMNER.

As this speech was made in the midst of the excitement in Massachusetts on the nomination of Mr. Sumner as Senator, an account of that contest will not be out of place here.

The early and active part taken by Mr. Sumner in favor of Emancipation, and the urgency of his efforts against Slavery, excited against him an intense opposition, not only in Massachusetts, but throughout the country. He was denounced as second only to Jefferson Davis in hostility to the Constitution. But these attacks aroused the friends of Emancipation, who were unwilling to see their representative sacrificed.

There were signs of this contest in the autumn of 1861, when Mr. Sumner called for Emancipation as our best weapon.[1] Governor Andrew saw it coming. In a letter, dated June 9, 1862, with reference to the appointment of officers in the Internal Revenue Bureau, he used the following language.

"The Hunkers will make the most strenuous efforts to secure a large representation in this agency, so that, by means of their influence with the people (and in travelling from town to town), they can poison the minds of prominent citizens against you, and accomplish your defeat by securing a Legislature favorable to their purposes.

"Depend upon it, that they are calculating largely upon the Tax Bill as an element in their desperate 'strategy' for the fall campaign."

The *New York Tribune*, in a vigorous article, June 24, 1862, entitled "Mr. Sumner's Seat," set forth reasons "why many earnest Republicans in other States would regret the retirement of Mr. Sumner." Here it said: —

"Most of our Republican statesmen have a political history antecedent to our existing organizations. Mr. Sumner, nearly alone, is nowhere regarded as having Whig or Democratic predilections, but as purely and wholly Re-

[1] See, *ante*, Vol. VI. pp 1-64.

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publican. Other statesmen, however profoundly Republican, regard collateral questions with an observing interest: the Tariff, the Currency, the Pacific Railroad, &c., largely engross their attention. Mr. Sumner profoundly believes it of paramount, absorbing interest that the nation should be just, even to her humblest, most despised children, and that Righteousness is the essential condition of material and other prosperity. Never inattentive to or neglectful of any public duty, never even accused of sacrificing or opposing the interest of Massachusetts in any matter of legislation, he is yet known to believe that her interests can never be truly promoted by sacrificing those of Humanity. In an age of venality and of uncharitable suspicion, he was never even suspected of giving a mercenary or selfish vote; in an atmosphere where every man is supposed to have his price, and to be scheming and striving for self-aggrandizement, no man ever suggested that Charles Sumner was animated by sinister impulses, or that he would barter or stifle his convictions for the Presidency. The one charge brought against him by his many bitter adversaries imports that he is *a fanatic*, — not that it was ever imagined that he is the special devotee of any fane or sect, but that he sincerely believes it the end of civil government to hasten the coming of God's earthly kingdom by causing His justice to pervade every act, every relation, and thus making the earth, so far as human imperfection will permit, a vestibule of heaven."

In warning against possible combination to defeat his reëlection, the article said: —

"All that the Republicans of other States can and do ask is, that no backstairs intrigue, no chimney-corner arrangement, shall send to Boston a Legislature secretly pledged to oust him, and elected by constituencies profoundly ignorant of any such manipulation. . . . . All we ask is, that those who vote at the polls to supersede Mr. Sumner in the Senate shall know for what they vote, and not be duped by professions only made to deceive."

The adverse spirit showed itself at a large public meeting in New York, July 1st, which was entitled by the *Herald*, "The Anti-Abolition and Anti-Secession Movement. — Disunion the Fruit of Abolition." Here Hon. William Duer, of Oswego, seemed to become the mouthpiece of the excited multitude.

"No emancipation and turning loose upon them hordes of uncivilized and ignorant Africans. . . . . No tyrant in history has ever made his name execrated by measures more despicable than such as those proposed by the Abolitionists for the humiliation and destruction of the South. The Southern people have been deluded by their leaders in the same way as the Northern people, and, in his opinion, the next man who walked up the scaffold after Jefferson Davis should be Charles Sumner. [*Loud and long-continued applause, mingled with hooting and groans for Sumner. Some person in the meeting attempted to say a word in his favor, but his voice was quickly drowned in loud shouts of 'Put him out!'*]"

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This is from the *Herald*. The same incident is thus reported in the *Tribune*.

"And if we came to hanging every traitor in this country in the order of their guilt, the next man who marched upon the scaffold after Jefferson Davis would be Charles Sumner. [*Loud applause, the greatest of the evening thus far. Groans for Sumner. Great excitement. Cries of 'Put him out!' Cries, 'Where is Horace Greeley?'*]"

A correspondent of a Boston paper, taking up the strain, echoed it for the benefit of Massachusetts.

"There are now two war-cries in New York, and the great Union mastiff is as ready to pounce upon one of the brutes as upon the other. If there are two parties outside of the doomed radicals, they are those, the most violent of them, who would hang Jeff. Davis and Sumner together, and those who would hang Davis first and Sumner afterwards.

"If Sumner is reëlected to the Senate, he may not find it convenient to pass through this city. That his name is odious, infamous, is not all, — it is cursed and abominable. The blood of thousands sacrificed to his ambition and personal revenge cries to Heaven against him, and if a Massachusetts Legislature can still support him by its vote, those who do so will deserve to lose their children at the altar of this Moloch."

The *New York Herald* followed with a leader, July 16th, entitled, "Senators Wade and Sumner," which, after announcing that the terms of these Senators would expire on the 4th of March next, made the following appeal.

"By the foulest means they have succeeded in clogging the wheels of our progress in the war, and have made another year of battles unavoidable. Had it not been for them and their coadjutors, the war would have been over and the Union restored on the Fourth of July instant. More than any other men they are responsible for the useless sacrifice of blood and treasure in the past, and for the three hundred thousand more men and five hundred millions more dollars which will have to be perilled in the future. Practically, and in the most emphatic sense, they are traitors to the country and enemies of the nation. From them, more than from a thousand Vallandighams, Jeff. Davis has received aid and comfort; for they have strengthened his forces by exasperating the South and by dividing and weakening the North. We hope that the loyal men of Massachusetts and Ohio will raise these questions in the coming elections for State legislators, and vote down every man who is pledged or who intends to vote for the reëlection of these twin traitors, Sumner and Wade. They have only escaped Fort Lafayette and the gallows because the Government has distrusted its own power and misunderstood the sentiments of the loyal people. Let this misunderstanding now end, and let Messrs. Sumner and Wade find, when they return to their homes, that they are held personally and politically responsible for their infamous and treasonable course."

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The friends of Emancipation in Massachusetts were not inactive. The issue thus presented was accepted by the formal nomination of Mr. Sumner, at the annual Republican State Convention at Worcester, September 10th.

The Convention was organized by the choice of the following officers.

President, — Hon. Alexander H. Bullock of Worcester.

Vice-Presidents, — District 1, Nathaniel Coggswell of Yarmouth; District 2, J. H. D. Blake of Braintree; District 3, Theodore Otis of Roxbury; District 4, Nehemiah Boynton of Chelsea; District 5, Timothy Davis of Gloucester; District 6, George Foster of Andover; District 7, Chauncey L. Knapp of Lowell; District 8, Valorous Taft of Upton; District 9, Joel Hayden of Williamsburg; District 10, George L. Wright of West Springfield. *At Large*, — John Bertram of Salem, George Morey of Boston, Tappan Wentworth of Lowell, Ensign H. Kellogg of Pittsfield, Charles G. Davis of Plymouth, Henry Alexander, Jr., of Springfield.

Secretaries, — Stephen N. Stockwell of Boston, William M. Walker of Pittsfield, Joseph B. Thaxter, Jr., of Hingham, William T. Hollis of Plymouth, Thomas B. Gardner of Boston, Joel Hayden, Jr., of Williamsburg.

John A. Andrew was re-nominated for Governor by acclamation. J. Q. A. Griffin, of Charlestown, introduced a resolution approving the course of the two Senators, and nominating Mr. Sumner for reëlection as Senator, and at the same time said: —

"Remember, it is our duty not only to sustain the arms of the Generals in the field, but likewise to sustain the President in his seat, the Cabinet in its counsels, the Governor in his chair, and, *above all, the fearless legislator in his duty.* [*Loud applause, and cries of 'Good!'*]"

Mr. Griffin was followed by Frederick Robinson, of Marblehead, who hoped that the resolution would be adopted unanimously, and also another, expressing the opinion of Massachusetts in favor of Emancipation. George F. Hoar, of Worcester, agreed with Mr. Robinson. As to the resolution approving Charles Sumner and Henry Wilson, "he liked that," but he wished, also, "an expression of the opinion of this Convention, that it is the duty of the United States Government, in the further prosecution of the war, to strike the Rebellion where it is weakest." The different propositions were then referred to a committee. At this stage the letter of Mr. Sumner to the Convention was presented and read by Mr. Claflin.[1]

[1] See, *ante*, p. 187.

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Among the resolutions subsequently reported were the two following.

"*Resolved*, That the most decisive measures for the complete and permanent suppression of this Rebellion are the most prudent, and that, as the institution of Slavery is a principal support of it, that institution shall be exterminated."

"*Resolved*, That we recognize and acknowledge the preëminent merits and services of our Senators in the Congress of the United States, the Hon. Charles Sumner and the Hon. Henry Wilson. In the posts of duty assigned them by the suffrages of their brother Senators, one as Chairman of the Committee on Foreign Relations, and the other as Chairman of the Committee on Military Affairs, they have cordially and unreservedly, and with masterly ability, supported all governmental measures, and fitly represented the Commonwealth as among the most cheerful and enthusiastic defenders of the Government. And now that the second term of our senior Senator is drawing to a close, we desire to express our warm approbation of his course and appreciation of his services, and to commend him to the suffrages of his fellow-citizens, whom he has served so well, that the Commonwealth may again honor itself by returning to duty at the capital a statesman, a scholar, a patriot, and a man of whom any republic in any age might be proud."

The whole series, as read, was received with intense enthusiasm, especially that against Slavery. A motion was made to amend by striking out that part recommending the reëlection of Mr. Sumner, which was voted down promptly, and the resolution was unanimously adopted.

The action of the Convention presented two distinct issues, — first, the extermination of Slavery, and, secondly, the reëlection of Mr. Sumner. There was at once a counter movement. A call was put forth for what was called a "People's Convention," at Faneuil Hall, October 7th, whose main object was to defeat the action of the Republican Convention, and especially the reëlection of Mr. Sumner. It was supposed that in this way all the elements of opposition could be united. This plan received an unexpected check by the Proclamation of Emancipation of September 22d. It could no longer be said that the Republican Party of Massachusetts and Mr. Sumner were not in entire harmony with the President.

Meanwhile Mr. Sumner addressed his fellow-citizens at Faneuil Hall, October 6th, in vindication of the Proclamation. On the succeeding day the "People's Convention" assembled in the same place and nominated candidates for State offices in opposition to the Republicans. The tone of this Convention appears in a brief extract from the speech of Hon. John G. Abbott, of Boston. After alluding to the various interests of Massachusetts, he said: —

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"And I tell you, Gentlemen, — and every heart here responds to it, — every heart out of this hall would respond to it, if the lips would speak the language of the heart, — I tell you, Gentlemen, we want men in the Halls of Congress, in the House of Representatives, and, above and beyond all, in the Senate Chamber, who will attend to those interests, and not be continually, as they have been, Sir, attending to mere wild speculations and sentimental theories. [*Applause.*] Do not the people cry out, 'For God's sake, give us somebody who believes there is something to be attended to in the wants of a million and a quarter of white men, women, and children'? [*Great applause.*]"

The spirit of this Convention was thus described by the *Norfolk County Journal*: —

"The partisanship of the People's Convention all centres in opposition to Charles Sumner. It is as pure an instance of personal hate on the part of its leaders as was ever exhibited. *This animosity comes solely from the fact that he was the earliest and has been the most persistent advocate of what is now the policy of the nation.* They hate Mr. Sumner, not because he is personally unamiable, not because there is a flaw in his moral character or a doubt as to the purity of his intentions, not because he has not represented the opinion of Massachusetts, and faithfully advocated her best interests on every point affecting her material prosperity. They have commenced this personal crusade *solely* because he has been the most conspicuous and uncompromising foe to the encroachments of Southern Slavery. And now that the President has ranged himself on Mr. Sumner's side, in opposing him they oppose the Administration."

On the next day, the Democratic Convention at Worcester adopted the nominations of the "People's Convention," so that the elements of opposition seemed to be united. The President of the Convention in his remarks announced the common object.

"Let me, then, appeal to you to come here with one heart and with kindly feelings towards all, entertaining respect for the opinions of all, so that, when this Convention shall have adjourned, a voice will go forth throughout this Commonwealth, that the day of John A. Andrew and Charles Sumner is ended. [*Prolonged cheers.*]"

Other speeches followed in the same tone, and insisting upon union "to beat Sumner and Andrew."

The issue was thus presented to the people of Massachusetts, and throughout the Commonwealth the election of Senators and Representatives turned mainly upon it. If the attack was vigorous, so also was the defence. Of the latter a few illustrations will suffice. The first is from Wendell Phillips, who, in an address at Music Hall, Sunday forenoon, November 2d, said: —

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"I say this much, before turning again to my immediate subject, for our great Senator, who has done justice to the manufacturing interests and the shipping of Massachusetts, as Webster did, and also justice to her conscience and her thought, as Webster did not. [*Applause.*] I do not wish to take one leaf from the laurel of the great Defender of the Constitution; he rests at Marshfield, beneath the honors he fairly earned. But we have put in his place a man far more practical than he was; we have put in his place the hardest worker that Massachusetts ever sent to the Senate of the United States [*applause*]; we have put in his place the Stonewall Jackson of the floor of the Senate, — patient of labor, untiring in effort, boundless in resources, terribly in earnest, — the only man who, in civil affairs, is to be compared with the great terror of the Union armies, the General of the Virginia forces: both ideologists, both horsed on an idea, and both men whom a year ago the drudges of State Street denounced, or would have denounced, as unpractical and impracticable; but when the war-bugle sounded through the land, both were found to be the only men to whom Carolina and Massachusetts hasted to give the batons of the opposing hosts."

John G. Whittier, whose words of flame had done so much in the long warfare with Slavery, was aroused from his retirement to testify. In the Amesbury *Villager*, near his home, he wrote: —

"In looking over the speeches and newspapers of his active opponents, it really seems to me, that, if ever a man was hated and condemned for his very virtues, it is this gentleman. Nobody accuses him of making use of his high position for his own personal emolument; no shadow of suspicion rests upon the purity of his private or public character; no man can point to an instance in which he has neglected any duty properly devolving upon him; no interest of his State has been forgotten or overlooked; no citizen has appealed to him in vain for kindly offices and courteous hearing and attention. As Chairman of the Committee of Foreign Affairs, his industry and ability have never been denied by his bitterest enemies. All admit that he has rendered important service to his Government. What, then, is his crime? Simply and solely this. that he stands inflexibly by his principles, — that he is too hearty in his hatred of the monstrous Wrong which initiated and still sustains the present Rebellion, — that in advance of his contemporaries he saw the danger and proclaimed it, — that he heartily sustains the President in his Proclamation, — that he is in favor of destroying the guilty cause of all our national calamities, that red-handed murderer and traitor against whom the sighs and groans of Massachusetts wives and mothers, weeping in every town and hamlet for dear ones who are not, are rising in swift witness to God.

"This is his crime, his real offence, in the eyes of his leading opponents. I know it has been said that he is too much a man of ideas, and not a statesman. That he is not a politician, in the modern sense of the word, I admit; and if indirection, trickery, and the habit of looking upon men, parties, and principles as mere stock in trade and tools of convenience are the qualifica-

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tions of statecraft, then he is not a statesman. But if a thorough comprehension of the great principles of law and political economy, of all which constitutes the true honor and glory and prosperity of a people, — if the will and ability to master every question as it arises, — if entire familiarity with the history, resources, laws, and policy of other nations, derived not merely from the study of books, but from free personal intercourse with the leading minds of Europe, are essential requisites of statesmanship, then is Charles Sumner a statesman in the noblest and truest sense. Certain it is that he is so regarded by the diplomatic representatives of European nations, and that no man in the country has so entirely the confidence and esteem of all who are really our friends in the Old World."

Horace Greeley, in an article under his own name in the New York *Independent*, and entitled, "Charles Sumner as a Statesman," united with the Republicans of Massachusetts.

"For the first time in our political history, a party has been organized and a State ticket nominated for the sole purpose of defeating the reëlection of one who is not a State officer, and never aspired to be. Governor Andrew is regarded with a hostility intensified by the fewness of those who feel it; but the bitterness with which Mr. Sumner is hated insists on the gratification of a canvass, even though a hopeless one; and, since there was no existing party by which this could be attempted without manifest futility, one was organized for the purpose. And it was best that this should be. Let us have a census of the friends and the enemies of Mr. Sumner in the State which he has so honored.

"I have said, that, while other Senators have shared his convictions, none has seemed so emphatically, so eminently, as he to embody and represent the growing, deepening Antislavery sentiment of the country. None has seemed so invariably to realize that a public wrong is a public danger, that injustice to the humblest and weakest is peril to the well-being of all. Others have seemed to regard the recent developments of disunion and treason with surprise and alarm: he has esteemed them the bitter, but natural, fruit of the deadly tree we have so long been watering and cherishing. The profound, yet simple truth, that 'RIGHTEOUSNESS exalteth a nation,' — that nothing else is so baleful as injustice, — that the country which gains a large accession of territory or of wealth at the cost of violating the least tittle of the canons of eternal rectitude has therein made a ruinous mistake, — that nothing else can be so important or so profitable as stern uprightness: such is the key-note of his lofty and beneficent career. May it be vouchsafed him to announce from his seat in the Senate the final overthrow of the demon he has so faithfully, so nobly resisted, and that from Greenland to Panama, from the St. John to the Pacific, the sun in his daily course looks down on no master and no slave!"

A single incident will illustrate the interest excited throughout the Commonwealth. A venerable citizen of New Bedford, seventy-nine

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years of age and very feeble, was assisted to the polls, saying, "Here goes a dying vote for Charles Sumner!"

The triumphant result of the election was known at once. It was declared officially on the meeting of the Legislature.

January 15, 1863, at twelve o'clock, each branch of the Legislature proceeded, by special assignment, to vote for a Senator to represent Massachusetts for six years from March 4th next ensuing. The vote in each branch was *viva voce*, the roll being called and each member pronouncing the name of the candidate he voted for.

In the Senate, the vote was, —

Charles Sumner, of Boston	33
Josiah G. Abbott, of Boston	5
Charles Francis Adams, of Quincy	1

In the House of Representatives, the vote was, —

Charles Sumner	194
Josiah G. Abbott	38
Caleb Cushing	2
Charles Francis Adams	1

In the House there were slight manifestations of applause when the result was announced, but they were promptly checked by the Speaker.

The result was noticed by the press throughout the country. The venerable *National Intelligencer*, at Washington, which had been opposed to the principles and policies of Mr. Sumner, employed the following generous terms.

"This is the third time that this gentleman has been thus honored by the Legislature of Massachusetts. Such repeated tokens of confidence would seem sufficiently to indicate, that, whatever dissent from the views of Mr. Sumner may elsewhere exist, he is the favorite, as he is admitted by all to be the able, representative of the opinions entertained by a majority of the people of this great and influential State. And these views now predominate in the conduct of the present Administration, which may be said to have adopted, reluctantly and at a late day, the political and military policy early commended to its favor by Mr. Sumner.

"If we are not able to concur with Mr. Sumner in certain of his opinions on questions of domestic politics, it gives us only the greater pleasure to bear our cheerful and candid testimony to the enlightened judgment and peculiar qualifications he brings to the discharge of the important duties devolved on him as Chairman of the Committee on Foreign Relations in the Senate. In this capacity he has deservedly won the confidence of the whole country."

Such testimony from a political opponent attested the change that had occurred in public policy and private feeling.

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The *Tribune* exhibited the change in yet stronger light.

"By a vote of nearly six to one, Massachusetts again declares her confidence in her long-tried Senator, and, on an issue defined with unmistakable clearness, for the third time returns him to his seat.

"The contrast between his present position and that which he held on first entering the Senate is instructive. Then an arrogant Democratic majority with unequalled effrontery declared him outside of any healthy political organization, excluded him from the Committees, denied him parliamentary courtesies, and withheld the common civilities of social intercourse and acquaintance. There were hardly three or four Senators in Congress who were in any degree identified with his opinions. He declared them none the less boldly, and his speeches for the repeal of the Fugitive Slave Act, on the Nebraska Bill, and on the Crime against Kansas finally exasperated the slaveholding oligarchy into personal violence, and for words spoken in orderly debate he was brutally assaulted on the floor of the Senate and seriously injured. This outrage, and the enthusiastic approval with which it was received throughout the South, were largely instrumental in rousing the North to a right estimate of the system and the political power which sought such means of defence."

The *Liberator*, by the pen of its faithful and able editor, William Lloyd Garrison, gave expression to the sentiments of those most enlisted against Slavery.

"Thus has Massachusetts nobly vindicated her name and fame as the foremost State of all the world in the cause of free institutions, and trampled beneath her feet the malignant aspersions cast upon the political reputation of her gifted Senator by the minions of a traitorous Slave Oligarchy. The vote is an overwhelming one, notwithstanding the desperate efforts of Mr. Sumner's enemies to make his defeat a sure event. Such enemies only serve to prove his personal worth and public usefulness, and their factious and profligate character.

"Mr. Sumner's friends in Washington proposed, last week, to give him a serenade in honor of his reëlection to the Senate; but, hearing of their intention, he declared that the compliment was not in accordance with the present condition of public affairs, and intimated that he preferred that the funds subscribed for the music should be donated to the Massachusetts Soldiers' Relief Association, which was done."

In Mr. Sumner's reëlection the cause of Emancipation triumphed, and Massachusetts was fixed irrevocably on that side.

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THE EMANCIPATION PROCLAMATION OUR CORNER-STONE.

LETTER TO FELLOW-CITIZENS AT SALEM, OCTOBER 10, 1862.

BOSTON, October 10, 1862.

GENTLEMEN, — I feel flattered by your invitation, where I recognize so many excellent names, and shall be happy to take advantage of the opportunity with which you honor me.

The Emancipation Proclamation of the President, on which you ask me to speak, is now the corner-stone of our national policy. For the sake of our country, and in loyalty to our Government, it ought to have the best support of every patriot citizen, without hesitation or lukewarmness. Now is the time for earnest men.

If agreeable to you, I accept your invitation for Monday evening, 20th October.

Believe me, Gentlemen, with much respect,

Faithfully yours,

CHARLES SUMNER.

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FARMERS, THEIR HAPPINESS AND LIBERAL SENTIMENTS.

SPEECH AT THE DINNER OF THE HAMPSHIRE COUNTY AGRICULTURAL SOCIETY, AT NORTHAMPTON, MASS., OCTOBER 14, 1862.

AT the dinner which followed the cattle-show, Mr. Sumner was introduced by Hon. Erastus Hopkins, who commenced by alluding to their early days at the Boston Latin School.

"GENTLEMEN, — It is now full forty years, when at school I had a schoolmate and a classmate who in point of physical altitude and breadth, but more especially (I am no flatterer, I only speak historic truth) in point of diligence and scholarship, was *primus inter pares*, — first among equals. That boy was father of the man. He now holds the position of Senator in the Senate of the United States, with a relative eminence no less than that of his earlier days. He is the valued servant and the honored Senator of Massachusetts, whom she has hitherto delighted to honor, and whom, so long as she remains true to her cherished sentiments, to her gushing instincts, and to her memorable history, SHE WILL EVER HONOR. [*Loud applause.*]

"We were told yesterday by the Rev. Dr. Huntington, in his admirable address delivered in this hall, that the farmer owed his first duty to his land, — to care for it, to fertilize it, and to beautify it. Recurring to this point, at the close of his address, he reminded the farmer that 'duty to his land' was susceptible of a double meaning: the one referring to the few acres of his own individual and exclusive proprietorship; the other, to that great land, that vast country, which he owned, and to which he owed duty, in common with all his fellow-citizens.

"I do not know that the honorable Senator owns, or ever did own, in separate proprietorship, any acres of land, — that he ever held the plough, or 'drove the team a-field'; I do not know whether he intends to enlighten us with regard to the care and culture of our homesteads and our farms; but I do know that he understands the farmer's 'duty to his land,' in the secondary and higher sense to which allusion has been made, — that, looking over our wide country, our rich heritage, and heritage of our fathers, he has been ever diligent and untiring in his endeavors to remove its deformities, to augment its fertility, and to crown it with beauty.

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"To which department of farming the Senator will direct his remarks I know not; but, whatever his topic, I submit without fear his words of instruction and of eloquence to the ordeal of your verdict.

"I have the honor to introduce to you the Hon. CHARLES SUMNER."

Mr. Sumner spoke as follows.

MR. PRESIDENT, LADIES, AND GENTLEMEN: —

I CANNOT forget the first time that I looked upon this beautiful valley, where river, meadow, and hill contribute to the charm. It was while a youth in college. With several of my classmates I made a pedestrian excursion through Massachusetts. Starting from Cambridge, we passed, by way of Sterling and Barre, to Amherst, where, arriving weary and footsore, we refreshed ourselves at the evening prayer in the College Chapel. From Amherst we walked to Northampton, and then, ascending Mount Holyoke, saw the valley of the Connecticut spread out before us, with river of silver winding through meadows of gold. It was a scene of enchantment, and time has not weakened the impression it made. From Northampton we walked to Deerfield, sleeping near Bloody Brook, and then to Greenfield, where we turned off by Coleraine through dark woods and over hills to Bennington in Vermont. The whole excursion was deeply interesting, but no part more so than your valley. Since then I have been a traveller at home and abroad, but I know no similar scene of greater beauty. I have seen the meadows of Lombardy, and those historic rivers, the Rhine and the Arno, and that stream of Charente, which Henry the Fourth called the most beautiful of France, — also those Scottish rivers so famous in legend and song, and the exquisite fields and sparkling waters of Lower Austria; but my youth-

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ful joy in the landscape which I witnessed from the neighboring hill-top has never been surpassed in any kindred scene. Other places are richer in the associations of history; but you have enough already in what Nature has done, without waiting for any further illustration.

It is a saying of Antiquity, often quoted: "Oh, too fortunate husbandmen, if they only knew their blessings!"[1] Nowhere are these words more applicable than to this neighborhood, where Nature has done so much, and where all that Nature has done is enhanced by an intelligent and liberal spirit. An eminent French writer, one of the greatest of his country, who wrote in the middle of the last century, when France was a despotism, Montesquieu, has remarked in his "Spirit of Laws," that "countries are not cultivated in proportion to their fertility, but in proportion to their liberty."[2] A beautiful truth. But here in this valley are both. Where is there greater fertility? where is there truer liberty?

If the farmers of our country needed anything to stimulate pride in their vocation, it would be found in the statistics furnished by the national census. That of 1860 is not yet prepared, and I go back to that of 1850. Here it appears, that, out of the whole employed population of the United States over fifteen years of age, two millions four hundred thousand, or forty-four per cent, were engaged in agricultural pursuits, while the total number engaged in commerce, trade, manufactures, mechanic arts, and mining was only one million six hundred thousand, or about thirty

[1] "O fortunatos nimium, sua si bona nôrint,
Agricolas!"
Georgic., Lib. II. 458, 459.

[2] De l'Esprit des Lois, Liv. XVIII. ch. 3.

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per cent. These figures show an immense predominance of the agricultural interest in the whole country. Of course in Massachusetts the commercial and manufacturing interests are relatively larger than in other parts of the country. But our farmers are numerous.

This same census shows, that, in 1850, the four largest staples of our country, ranking them according to their nominal value, were: Indian corn, two hundred and ninety-six million dollars; wheat, one hundred million dollars; cotton, ninety-eight million dollars; hay, ninety-six million dollars. These figures, of course, are familiar, but they are so instructive that they will bear repetition. Besides illustrating the magnitude of our agricultural interests, they shed new light on the lofty pretensions that have been made for King Cotton. There is no crown for hay, or wheat, or Indian corn, and yet two of these stand above cotton. But the whole table testifies to the power of the farmer.

From another quarter are statistics showing how agricultural pursuits favor longevity. Out of seventeen hundred persons, the average life of farmers was forty-five years; of merchants, thirty-three years; of mechanics, twenty-nine years; and of laborers, twenty-seven years. Thus length of days seems to be an agricultural product.

Gratifying as it may be to glance at agriculture in these statistics, which must arouse the pride, if not the content of the farmer, there are other aspects which to my mind are more interesting. In early days agriculture was only an art, most imperfectly developed. The plough of the ancient husbandman was little more than a pole with a stick at the end by which the earth was scratched, and other implements were of like sim-

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plicity. As for the knowledge employed, it was all of the most superficial character. But agriculture is now not only an art, in a high degree of perfection, it is also a science, with its laws and rules, as much as navigation or astronomy. There is no knowledge which will not help the farmer; especially is there no branch of science. Geography, geology, meteorology, botany, chemistry, zoölogy, and animal physiology, all contribute. Regarding agriculture in this light, we cannot fail to give the farmer a high standard of excellence. In the cultivation of the earth he practises an art and pursues a science. But human character is elevated by the standard which is followed.

There is another feature in the life of the farmer which is to me more interesting still. The farmer is patriotic and liberal. Dependent upon Nature, he learns to be independent of Man. If not less than others under the influence of local prejudices, he is at least removed from those combinations engendered by the spirit of trade. He thinks for himself, and acts for his country. I do not venture to say that he is naturally a reformer, but I think the experience of our country attests that he does not set himself against the ideas of the age.

Here Mr. Sumner dwelt on that spirit of obstructiveness which is so common, illustrating it by historic instances, and then proceeded.

I rejoice to believe that there is no such hide-bound indifference to liberal ideas among our farmers. But, just in proportion as these are numerous, intelligent, powerful, and liberal, do they constitute an arm of strength. Pardon me, if now more than ever I see them in this character. In appealing to them for the

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sake of our country, I make no appeal inconsistent with the proprieties of this occasion. Our country is in peril, and it must be saved. This is enough.

Under God, our country will be saved through the united energy, the well-compacted vigor of the people directed by the President of the United States. Our first duty is to stand by the President, and to hold up his hands. There must be no hesitation or timidity. If he calls for troops, he must have them. If, besides calling for troops, he enlist other agencies for the suppression of the Rebellion, he must be sustained precisely as in calling for troops.

Thus far the main dependence has been troops, to which our honored Commonwealth has made generous contributions. No part of the country has suffered more in gallant officers, youthful, gentle, and excellent in all things. This neighborhood has its story of sorrow. Amherst has buried the pure and patriotic Stearns, and only within a few days here in Northampton you have received from the field of death the brave and accomplished Baker.

And now at last a new power is invoked, being nothing less than that great Proclamation of the President which places Liberty at the head of our columns.

Mr. Sumner here explained the immediate and prospective effects of the Proclamation, and then closed as follows.

It is sometimes said that this edict is unconstitutional. Some there are with whom the Constitution is a constant stumbling-block, wherever anything is to be done for Freedom. It cannot be so, I trust, with the liberal farmers of this valley. Of course, the Edict of Emancipation is to be regarded as a war measure, made in the

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exercise of the Rights of War. It is as much a war measure as the proclamation calling forth troops, and is entitled to the same support. It is not a measure of Abolition or Antislavery, or of philanthropy, but a war measure, pure and simple. If there be any person disposed to discourage it, I warn him that *he departs from the duties of patriotism hardly less than if he discouraged enlistments.* There is but one course now before us. The policy of Emancipation, at last adopted as a war measure, must be sustained precisely as we sustain an army in the field. With this new and mighty agency I cannot doubt the result. The Rebellion will be crushed, and the Republic will be elevated to heights of power and grandeur where it will be an example to mankind. It is related of the Emperor Julian, known as the Apostate, — for he had once embraced Christianity, — that, perishing before he had struck the last blows prepared by hatred to the Church, he looked at the blood which spurted from his side, and then cried, "Galilean, thou hast conquered!" Whether fable or truth, the story has its meaning. Such a cry will yet be heard from the apostate chiefs in our Rebel States, "Liberty, thou hast conquered!" — and the echo of this cry will be heard round the globe.

Following the usage of your festival, I offer the following sentiment: —

The Valley of the Connecticut. Happy in its fertility, and also in its beauty; happier still in that inspiration of Liberty which is better than fertility or beauty.

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AMBULANCE AND HOSPITAL CORPS.

RESOLUTION IN THE SENATE, DECEMBER 3, 1862.

THE following resolution, offered by Mr. Sumner, was adopted.

RESOLVED, That the Committee on Military Affairs and the Militia be directed to consider the expediency of providing by law for the establishment of a corps composed of men especially enlisted for hospital and ambulance service, with officers commissioned purposely to command them, who shall have the entire charge, under the medical officers, of the hospitals and of the ambulance wagons, so as to enlarge the usefulness of this humane service, and give to it the efficiency derived from organization.

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CELEBRATION OF EMANCIPATION.

LETTER TO A PUBLIC MEETING OF COLORED CITIZENS IN BOSTON, JANUARY 1, 1863.

WASHINGTON, January 1, 1863.

MY DEAR SIR,—Owing to the wretched condition of the mails between New York and Washington, I did not receive your letter of the 27th in season for an answer to be used at the proposed meeting.

I am glad that you celebrated the day. It deserved your celebration, your thanksgiving, and your prayers. On that day an angel appeared upon the earth.

Accept my best wishes for your association, and believe me, dear Sir,

Faithfully yours,

CHARLES SUMNER.

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PRUDENCE IN OUR FOREIGN RELATIONS.

Remarks in the Senate, on Resolutions against French Interference in Mexico, February 3, 1863.

In the Senate, January 19th, Mr. McDougall, a Democratic Senator from California, introduced the following resolutions, setting forth the duty of the United States to take steps against French interference in Mexico.

"*Resolved by the Senate (the House of Representatives concurring)*, That the present attempt by the Government of France to subject the Republic of Mexico to her authority by armed force is a violation of the established and known rules of International Law, and that it is, moreover, a violation of the faith of France, pledged by the treaty made at London on the 31st day of October, 1861, between the allied Governments of Spain, France, and England, communicated to this Government over the signatures of the representatives of the allies, by letter of the 30th day of November, 1861, and particularly and repeatedly assured to this Government through its minister resident at the Court of France.

"*Resolved further*, That the attempt to subject the Republic of Mexico to French authority is an act not merely unfriendly to this Republic, but to free institutions everywhere; and that it is regarded by this Republic as not only unfriendly, but as hostile.

"*Resolved further*, That it is the duty of this Republic to require of the Government of France that her armed forces be withdrawn from the territories of Mexico.

"*Resolved further*, That it is the duty and proper office of this Republic, now and at all times, to lend such aid to the Republic of Mexico as is or may be required to prevent the forcible interposition of any of the States of Europe in the political affairs of that Republic.

"*Resolved further*, That the President of the United States be requested to cause to be communicated to the Government of Mexico the views now expressed by the two Houses of Congress, and be further requested to cause to be negotiated such treaty or treaties between the two Republics as will best tend to make these views effective."

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February 3d, Mr. McDougall moved to take them up for consideration. His motion was opposed by Mr. Sumner, who said, among other things: —

BUT, Sir, if the Senate had abundant time, like a mere debating society, and were free to select at will a topic for discussion, I surely should object at this moment to a debate which must be not only useless, but worse than useless. I forbear from details at present. I wish to avoid them, unless rendered necessary. I content myself with saying that the resolutions either mean something or they mean nothing. If they mean nothing, surely the Senate will not enter upon their discussion. If they mean anything, if they are not mere words, they mean war, and this no common war, but war with a great and adventurous nation, powerful in fleets and armies, bound to us by treaties and manifold traditions, and still constant in professions of amity and good-will. Sir, have we not war enough already on our hands, without needlessly and wantonly provoking another? For myself, I give all that I have of intellectual action, and will, and heart, to the suppression of this Rebellion; and never, by my consent, shall the Senate enter upon a discussion the first effect of which will be aid and comfort to the Rebellion itself.

Mr. McDougall, in reply, said: "I trust the Senate will dare to look the grave question of our foreign relations with France and Mexico fairly, boldly, and openly in the face. I hope the Senate will not take counsel of its fears." Mr. Sumner followed.

MR. PRESIDENT, — I, too, hope that the Senate will dare do everything that is right; but I hope that it will not dare to embarrass the Government at this moment, and give aid and comfort to the Rebellion. I do not say

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that the Senator means to give such aid and comfort, but I do say that the very speech which has just fallen from him, to the extent of its influence, will give aid and comfort. Can any Senator doubt that all who sympathize with the Rebellion will rejoice to see this Senate discussing the question of peace and war with a great European power? Can any one doubt that the Rebels over the way will rejoice and clap their hands, when they hear the tidings? Sir, I will not give them any such encouragement. They shall not have it, if vote or voice of mine can prevent. I, too, Sir, am for the freest latitude of debate, but I am for the suppression of the Rebellion above and before everything else; and the desires of the Senate must all yield at this moment to the patriotic requirements of the country. There is a time for all things. There is a time to weep, and there is a time to laugh. I do not know, that, in the chapter of national calamities, there may not be a time for further war; but I do say that the duty of statesmanship here in this Chamber is to set the foot down at once against any such proposition, which, just to the extent of its recognition, must add to present embarrassments.

The resolutions were taken up for consideration by a vote of 29 yeas to 16 nays, when Mr. McDougall made an elaborate speech. Mr. Sumner followed.

MR. PRESIDENT, — At the present moment there is one touchstone to which I am disposed to bring every question, especially in our foreign relations; and this touchstone is its influence on the suppression of the Rebellion. A measure may in itself be just or expedient; but if it would be a present burden, if it would

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add to our embarrassments and troubles, and especially if it would aggravate our military condition, then, whatever may be its merits, I am against it. To the suppression of the Rebellion the country offers life and treasure without stint, and it expects that these energies shall not be sacrificed or impaired by the assumption of any added responsibilities.

If I bring these resolutions to this touchstone, they fail. They may be right or wrong in fact and principle, but their influence at this moment, if adopted, must be most prejudicial to the cause of the Union. Assuming the tone of friendship to Mexico, they practically give to the Rebellion a most powerful ally, for they openly challenge war with France. There is madness in the proposition. I do not question the motives of the Senator, but it would be difficult to conceive anything more calculated to aid and comfort the Rebellion, just in proportion to its adoption. Sufficient unto the day is the evil thereof. The present war is surely enough, without adding war with France.

I content myself with this protest, without following the Senator in a discussion which must be unprofitable, if not pernicious.

I say nothing of France, whose power cannot be doubted, and whose friendship I would carefully cultivate.

I say nothing of Mexico, our unhappy neighbor Republic, torn, as we now are, except to declare sympathy and cordial good-will.

It is sufficient that the policy of the Senator from California, without any certainty of good to Mexico, must excite the hostility of France, and give to the Rebellion armies and fleets, not to mention that recognition and foreign intervention which we deprecate.

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Let us all unite to put down the Rebellion. This is enough for the present.

If Senators are sensitive, when they see European monarchies again setting foot on this hemisphere, — entering Mexico with their armies, entering New Grenada with their influence, and occupying the ancient San Domingo, — let them consider that there is but one way in which this return of empire can be arrested. It is by the suppression of the Rebellion. Let the Rebellion be overcome, and this whole continent will fall naturally, peacefully, and tranquilly under the irresistible influence of American institutions. Resolutions cannot do this, nor speeches. I therefore move that the resolutions lie on the table.

The Senate went into Executive Session without a vote. The resolutions came up again the next day, when, on motion of Mr. Sumner, they were laid on the table, by a vote of yeas 34, nays 10.

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EMPLOYMENT OF COLORED TROOPS.

Bill in the Senate, February 9, 1863.

As early as May 26, 1862, Mr. Sumner introduced a resolution declaring that the time had come for the Government "to invite all, without distinction of color, to make their loyalty manifest by ceasing to fight or labor for the Rebels, and also by rendering every assistance in their power to the cause of the Constitution and the Union, according to their ability, whether by *arms*, or labor, or information, or in any other way."

After much debate, an Act was passed to amend the Act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, approved February 28, 1795. The new Act, approved by the President July 17, 1862, contained the following provision: —

"That the President be, and he is hereby, authorized to receive into the service of the United States, for the purpose of constructing intrenchments, or performing camp service or any other labor, or any military or naval service for which they may be found competent, persons of African descent; and such persons shall be enrolled and organized under such regulations, not inconsistent with the Constitution and laws, as the President may prescribe." [1]

This was the beginning of colored troops.

In his speech at Faneuil Hall, October 6, 1862,[2] Mr. Sumner justified an appeal to the slaves.

In the Senate, February 9, 1863, he introduced the following bill, providing for the enlistment of slaves and others of African descent, which was referred to the Committee on Military Affairs and the Militia, and ordered to be printed.

[1] Statutes at Large, Vol. XII. p. 599, sec 12.

[2] *Ante*, pp 212 seqq.

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A BILL to raise additional Soldiers for the Service of the United States.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each and every able-bodied male person of the age of eighteen years and under forty-five years, made free by the Act of Congress, approved August sixth, eighteen hundred and sixty-one, entitled "An Act to confiscate property used for insurrectionary purposes," or the Act of July seventeenth, eighteen hundred and sixty-two, entitled "An Act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of Rebels, and for other purposes," or by Proclamations of the President of the United States, dated September twenty-second, eighteen hundred and sixty-two, and January first, eighteen hundred and sixty-three, respectively, or by any other legal and competent authority exercised in suppressing the present Rebellion, shall severally be forthwith enrolled as a military force of the United States by the commanding officer within whose department such persons shall be found, and they shall be organized, armed, equipped, and mustered into the service of the United States, to serve during the present war, to a number not exceeding three hundred thousand men.

SEC. 2. *And be it further enacted,* That the said military force shall be organized according to the regulations of the branch of service in which they may be designated to serve, and receive the same rations, clothing, and equipments as volunteers, and a monthly pay of seven dollars, to be paid one half at the end of each month, and the other half when discharged. They shall

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be officered by persons appointed and commissioned by the President, and governed by the rules and articles of war, and such other rules and regulations as may be prescribed by law. Each person so serving as a non-commissioned officer or private in such military force of the United States shall be entitled to receive, upon his discharge, ten acres of land, and each person so serving as a commissioned officer shall be entitled to receive twenty-five acres, the same to be located upon any lands confiscated during the present Rebellion, and not reserved by the Government for public use; the land so located to be occupied only as a homestead by the person entitled to receive the same, and his family.

SEC. 3. *And be it further enacted*, That the President be, and is hereby, authorized to further order the voluntary enlistment or enrolment of each and every able-bodied free male person of African descent, of the age of eighteen years and under forty-five years, within the United States, for military service, as provided by this Act, except that the monthly pay of such free persons shall be the same as that of the volunteers: *Provided*, The whole number called into the service of the United States under the provisions of this section shall not exceed one hundred thousand men.

There was no action of the Committee on this bill, and it fell with the session.

February 10, 1864, more than a year later, the subject was brought forward in the House of Representatives by Mr. Stevens, in an amendment to the Enrolment Bill then pending, and finally prevailed in the following terms: —

"That all able-bodied male colored persons, between the ages of twenty and forty-five years, resident in the United States, shall be enrolled accord-

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ing to the provisions of this Act and of the Act to which this is an amendment, and form part of the national forces; and when a slave of a loyal master shall be drafted and mustered into the service of the United States, his master shall have a certificate thereof, and thereupon such slave shall be free "[1]

[1] Statutes at Large, Vol. XIII. p. 11, sec. 24.

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IMMEDIATE EMANCIPATION, AND NOT GRADUAL.

SPEECH IN THE SENATE, ON THE BILL PROVIDING AID FOR EMANCIPATION IN MISSOURI, FEBRUARY 12, 1863.

THE recommendation of President Lincoln to aid the States in Emancipation, though urged by him, never found great favor in Congress. Among the measures prompted by it was one introduced into the House of Representatives by Mr. Noell, of Missouri, entitled, "A Bill giving aid to the State of Missouri for the purpose of securing the abolishment of Slavery in said State." This provided that the Government of the United States would, upon the passage of a good and valid Act of Emancipation of all the slaves therein, and to be irrepealable, unless by the consent of the United States, apply the sum of ten million dollars in United States bonds, redeemable in thirty years from date. It passed the House by 73 yeas against 46 nays.

In the Senate, this bill was referred to the Committee on the Judiciary, which reported a substitute, when it was recommitted and another substitute reported, by which it was provided, that, on the adoption of a valid law by Missouri "for the *gradual* or immediate emancipation of all the slaves therein, and the exclusion of Slavery forever thereafter from said State," twenty million dollars in United States bonds should be applied "to compensate for the inconveniences produced by such change of system," which was to take effect "on some day not later than the fourth day of July, 1876"; but the bonds were not to exceed ten million dollars, unless there was "full and perfect manumission" before the fourth day of July, 1865, nor in their aggregate were they to exceed "the sum of three hundred dollars for each slave emancipated."

This recognition of the principle of *Gradual* Emancipation, especially as a war measure, was very disagreeable to Mr. Sumner. February 7th, he moved to strike out "seventy-six" and insert "sixty-four," so that the Act of Emancipation should go into operation on the 4th of July, 1864; and here he remarked:—

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MR. PRESIDENT, — This bill, as I understand it, is a bill of peace; it is to bring back tranquillity in a disturbed State. If you ask for authority under the Constitution, I cannot doubt that it is in the War Power. It is in the power to suppress this insurrection, to put down this rebellion. But most strangely do you seek to put down this rebellion by the abolition of Slavery twenty years, or even ten years, from now. To my mind the proposition is simply ridiculous. I use strong language, because so it seems to me, and I cannot help saying it.

Sir, for the sake of our common country at this critical moment, for the sake of Missouri herself, for the sake of every slave-master in Missouri, and for the sake of every slave, I insist that Abolition shall be completed at the nearest possible day. History, reason, and common sense are uniform in this requirement, and I challenge contradiction to their concurring testimony.

The measure on its face is double, being in the alternative. It provides a certain sum in the event of Emancipation taking place within two years, and another sum if it takes place at a certain distant day. Now, Sir, I do not desire any alternative. I trust that what we do will take effect at once. I wish to see the benefit of it, especially to see it felt in the suppression of the Rebellion.

Mr. Willey, of West Virginia, said, that, in his estimation, "it would be much better for Missouri, and for the slave, if, instead of 1876, it was 1900"; and he was followed by Mr. Henderson, of Missouri, on the same side. Mr. Sumner replied briefly.

I ASSUME that Senators are in earnest for something to put down the Rebellion. Our country, I know, is

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rich in resources. It can vote millions for almost any purpose; but still I doubt if the Senator from Missouri would urge Congress, at this moment, to appropriate millions, unless he expected in this way to do something very positive against the Rebellion. I assume that this is his object, and also the object of other Senators urging this measure. Is there any other object to justify, at this moment, a vote for it? Is there any Senator who will toss twenty or ten millions of money to any State, unless he is satisfied that by doing so he can help put an end to the Rebellion? On this point all must agree. Therefore do I insist on the single question, How shall we most surely help put an end to the Rebellion? If this can be best accomplished by immediate Emancipation, then must we vote accordingly. But if it is better to allow Emancipation to drag through twenty or even ten years, with the possibility of reaction, and with the certainty of controversy during all this period, and, above all, without any immediate good, then will Senators vote accordingly. Sir, I am against any such thing. I wish the measure to be effective for the object proposed, and, as I do not believe it can be effective, unless immediate, I must vote accordingly.

The amendment of Mr. Sumner was lost, — Yeas 11, Nays 26.

In the debate which ensued, Mr. Powell, of Kentucky, taunted Mr. Sumner with desiring the negroes of Missouri to be "freed quickly, so that Governor Andrew can recruit there to fill up the Massachusetts quota." Mr. Sumner replied: "I would have a musket put in the hands of every one of these negroes in Missouri."

Mr. Sumner moved to amend by striking out "three hundred" and inserting "two hundred" dollars, as the measure of value of a slave. Here he said: —

I OBJECT to the enormous valuation. I object to it

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in the present bill, and also as a precedent. We shall be bound by it hereafter. The next bill will have this same value of three hundred dollars for each slave. I would begin by putting it at two hundred dollars, and that is my motion.

This amendment was adopted, — Yeas 19, Nays 17.

Mr. Sumner then moved to strike out the word "gradual," so that the money should be paid only on immediate Emancipation. Here he remarked, that he did not understand a war measure which was to go into effect ten years from now, — that he did not understand a gradual war measure, — that it was an absurdity in terms, and utterly indefensible.

The motion was lost, — Yeas 11, Nays 27.

The question then recurred on the adoption of the substitute, when Mr. Sumner spoke as follows.

MR. PRESIDENT, — If I speak tardily in this debate, I hope for the indulgence of the Senate. Had I been able to speak earlier, I should have spoken; but, though present in the Chamber, and voting when this bill was under consideration formerly, I was at the time too much of an invalid to take an active part in the debate. In justice to myself and to the great question, I cannot be silent.

I have already voted to give Missouri twenty million dollars to secure freedom at once for her slaves, and to make her at once a Free State. I am ready to vote more, if more be needed for this good purpose; but I will not vote money to be sunk and lost in an uncertain scheme of Prospective Emancipation, where Freedom is a jack-o'-lantern, and the only certainty is the Congressional appropriation. For money paid down, Freedom must be delivered.

Notwithstanding all differences of opinion on this

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important question, there is much occasion for congratulation in the progress made.

Thank God, on one point the Senate is substantially united. A large majority will vote for Emancipation. This is much, both as a sign of the present and a prophecy of the future. A large majority, in the name of Congress, will offer pecuniary aid. This is a further sign and prophecy. Such a vote, and such an appropriation, will constitute an epoch. Only a few short years ago the very mention of Slavery in Congress was forbidden, and all discussion of it was stifled. Now Emancipation is an accepted watchword, while Slavery is openly denounced as a guilty thing worthy of death.

It is admitted, that now, under the exigency of war, the United States ought to coöperate with any State in the abolition of Slavery, giving it pecuniary aid; and it is proposed to apply this principle practically in Missouri. It was fit that Emancipation, destined to end the Rebellion, should begin in South Carolina, where the Rebellion began. It is also fit that the action of Congress in behalf of Emancipation should begin in Missouri, which, through the faint-hearted remissness of Congress, as late as 1820, was opened to Slavery. Had Congress at that time firmly insisted that Missouri should enter the Union as a Free State, the vast appropriation now proposed would have been saved, and, better still, this vaster civil war would have been prevented. The whole country is now paying with treasure and blood for that fatal surrender. Alas, that men should forget that God is bound by no compromise, and that, sooner or later, He will insist that justice shall be done! There is not a dollar spent, and not a life sacrificed, in this calamitous war, which does not plead

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against any repetition of that wicked folly. Palsied be the tongue that speaks of compromise with Slavery!

Though, happily, compromise is no longer openly mentioned, yet it insinuates itself in this debate. In former times it took the shape of barefaced concession, as in the admission of Missouri with Slavery, in the annexion of Texas with Slavery, the waiver of the prohibition of Slavery in the Territories, the atrocious bill for the reënslavement of fugitives, and the opening of Kansas to Slavery, first by the Kansas Bill, and then by the Lecompton Constitution. In each of these cases there was concession to Slavery which history records with shame, and it was by this that your wicked slaveholding conspiracy waxed confident and strong, till at last it became ripe for war.

And now it is proposed, as an agency in the suppression of the Rebellion, to make an end of Slavery. By proclamation of the President, all slaves in certain States and designated parts of States are declared free. Of course this proclamation is a war measure, rendered just and necessary by exigencies of war. As such, it is summary and instant in operation, not prospective or procrastinating. A proclamation of Prospective Emancipation would have been an absurdity, — like a proclamation of a prospective battle, where not a blow was to be struck or a cannon pointed before 1876, unless, meanwhile, the enemy desired it. What is done in war must be done promptly, except, perhaps, under the policy of defence. Gradualism is delay, and delay is the betrayal of victory. If you would be triumphant, strike quickly, let your blows be felt at once, without notice or premonition, and especially without time for resistance or debate. Time deserts all who do not appreciate its value.

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Strike promptly, and time becomes your invaluable ally; strike slowly, gradually, prospectively, and time goes over to the enemy.

But every argument for the instant carrying out of the Proclamation, every consideration in favor of despatch in war, is especially applicable to whatever is done by Congress as a war measure. In a period of peace Congress might fitly consider whether Emancipation should be immediate or prospective, and we could listen with patience to the instances adduced by the Senator from Wisconsin [Mr. DOOLITTLE] in favor of delay, — to the case of Pennsylvania, and to the case of New York, where slaves were tardily admitted to their birthright. Such arguments, though to my judgment of little value at any time, might then be legitimate. But now, when we are considering how to put down the Rebellion, they are not even legitimate. There is but one way to put down the Rebellion, and that is *instant action;* and all that is done, whether in the field, in the Cabinet, or in Congress, must partake of this character. Whatever is postponed for twenty years, or ten years, may seem abstractly politic or wise; but it is in no sense a war measure, nor can it contribute essentially to the suppression of the Rebellion.

I think I may assume, without contradiction, that the tender of money to Missouri for the sake of Emancipation is a war measure, to be vindicated as such under the Constitution of the United States. It is also an act of justice to an oppressed race. But it is not in this unquestionable character that it is now commended. If it were urged on no other ground, even if every consideration of philanthropy and of religion pleaded for it with

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rarest eloquence, I fear that it would stand but little chance in either House of Congress. Let us not disguise the truth. Except as a war measure to aid in putting down the Rebellion, this proposition could expect little hospitality here. Senators are ready to vote money — as the British Parliament voted subsidies — to supply the place of soldiers, or to remove a stronghold of the Rebellion, all of which is done by Emancipation. I do not overstate the case. Slavery is a stronghold, which through Emancipation will be removed, while every slave, if not every slave-master, becomes an ally of the Government. Therefore Emancipation is a war measure, and constitutional as the raising of armies or the occupation of hostile territory.

In vindicating Emancipation as a war measure, we must see that it is made under such conditions as to exercise a present, *instant* influence. It must be immediate, not prospective. In proposing Prospective Emancipation, you propose a measure which can have little or no influence on the war. Abstractly Senators may prefer that Emancipation should be prospective rather than immediate; but this is not the time for the exercise of any abstract preference. Whatever is done as a war measure must be immediate, or it will cease to have this character, whatever you call it.

If I am correct in this statement, — and I do not see how it can be questioned, — then is the appropriation for Immediate Emancipation just and proper under the Constitution, while that for Prospective Emancipation is without sanction, except what it finds in the sentiments of justice and humanity.

It is proposed to vote ten million dollars to promote Emancipation ten years from now. Perhaps I am san-

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guine, but I cannot doubt that before the expiration of that period Slavery will die in Missouri under the awakened judgment of the people, even without the action of Congress. If our resources were infinite, we might tender this large sum by way of experiment; but with a treasury drained to the bottom, and a debt accumulating in fabulous proportions, I do not understand how we can vote millions, which, in the first place, will be of little or no service in the suppression of the Rebellion, and, in the second place, will be simply a largess in no way essential to the subversion of Slavery.

Whatever is given for Immediate Emancipation is given for the national defence, and for the safety and honor of the Republic. It will be a blow at the Rebellion. Whatever is given for Prospective Emancipation will be a gratuity to slaveholders and a tribute to Slavery. Pardon me, if I repeat what I have already said on this question: "Millions for defence, but not a cent for tribute"; millions for defence against peril, from whatever quarter it may come, but not a cent for tribute in any quarter, — especially not a cent for tribute to the loathsome tyranny of Slavery.

I know it is sometimes said that even Prospective Emancipation will help weaken the Rebellion. That it will impair the confidence in Slavery, and also its value, I cannot doubt. But it is equally clear that it will leave Slavery still alive and on its legs; and just so long as this is the case, there must be controversy and debate, with attending weakness, while Reaction perpetually lifts its crest. Instead of tranquillity, which we all seek for Missouri, we shall have contention. Instead of peace, we shall have prolonged war. Every year's delay, ay, Sir, every week's delay, in dealing death to

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Slavery leaves just so much of opportunity to the Rebellion; for so long as Slavery is allowed to exist in Missouri the Rebellion will still struggle, not without hope, for its ancient mastery. But let Slavery cease at once and all will be changed. There will be no room for controversy or debate, with attending weakness; nor can Reaction lift its crest. There will be no opportunity to the Rebellion, which must cease all effort there, when Missouri can no longer be a Slave State. Freedom will become our watchful, generous, and invincible ally, while the well-being, the happiness, the repose, and the renown of Missouri will be established forever.

Thus far, Sir, I have presented the argument on grounds peculiar to this case; and here I might stop. Having shown, that, as a military necessity, and for the sake of that economy which it is our duty to cultivate, Emancipation must be immediate, I need not go further. But I do not content myself here. The whole question is opened between Immediate Emancipation and Prospective Emancipation,—or, in other words, between doing right at once and doing right at some future, distant day. Procrastination is the thief, not only of time, but of virtue itself. Yet such is the nature of man that he is disposed always to delay, so that he does nothing to-day which he can put off till to-morrow. Perhaps in no single matter is this disposition more apparent than with regard to Slavery. Every consideration of humanity, justice, religion, reason, common sense, and history, all demanded the instant cessation of an intolerable wrong, without procrastination or delay. But human nature would not yield, and we have been driven to argue the question, whether an outrage, asserting property

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in man, denying the conjugal relation, annulling the parental relation, shutting out human improvement, and robbing its victim of all the fruits of his industry, — the whole to compel work without wages, — should be stopped instantly or gradually. It is only when we regard Slavery in its essential elements, and look at its unutterable and unquestionable atrocity, that we fully comprehend the mingled folly and wickedness of this question. If it were merely a question of economy, or a question of policy, then the Senate might properly debate whether the change should be instant or gradual; but considerations of economy and policy are all absorbed in the higher claims of justice and humanity. There is no question whether justice and humanity shall be immediate or gradual. Men are to cease at once from wrong; they are to obey the Ten Commandments instantly, and not gradually.

Senators who argue for Prospective Emancipation show themselves insensible to the true character of Slavery, or insensible to the requirements of reason. One or the other of these alternatives must be accepted.

Shall property in man be disowned immediately, or only prospectively? Reason answers, Immediately.

Shall the conjugal relation be maintained immediately, or only prospectively? Reason recoils from the wicked absurdity of the inquiry.

Shall the parental relation be recognized immediately, or only prospectively? Reason is indignant at the question.

Shall the opportunities of knowledge, including the right to read the Book of Life, be opened immediately or prospectively? Reason brands the idea of delay as impious.

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Shall the fruits of his own industry be given to a fellow-man immediately or prospectively? Reason insists that every man shall have his own without postponement.

And history, thank God, speaking by examples, testifies in conformity with reason. The conclusion is irresistible. If you would contribute to the strength and honor of the Nation, if you would bless Missouri, if you would benefit the slave-master, if you would elevate the slave, and, still further, if you would afford an example which shall fortify and consecrate the Republic, making it at once citadel and temple, do not put off the day of Freedom. In this case, more than in any other, he gives twice who quickly gives.

The substitute, containing the provisions for Gradual Emancipation, was then adopted, — Yeas 27, Nays 10, — Mr. Sumner voting in the minority. The final question was on the passage of the bill as amended by the insertion of the substitute, when Mr. Sumner said: —

I SHALL vote for this bill on its final passage, but it will be because I know it will go back to the House of Representatives, where it can undergo consideration, and where, I trust, a bill will be at last matured that will embody the true principle which ought to govern this great question.

The bill passed, — Yeas 23, Nays 18. It went back to the House, where it gave way to a new bill, which was lost in the closing hours of the Thirty-Seventh Congress. Aid to States and Compensated Emancipation soon passed out of sight.

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LETTERS OF MARQUE AND REPRISAL.

SPEECHES IN THE SENATE, ON THE BILL TO AUTHORIZE THE PRESIDENT, IN ALL DOMESTIC OR FOREIGN WARS, TO ISSUE LETTERS OF MARQUE AND REPRISAL, FEBRUARY 14 AND 17, 1863.

AT the close of the preceding session of Congress, Mr. Grimes introduced a bill concerning Letters of Marque and Reprisal, but he was unable to secure the action of the Senate upon it. January 7, 1863, he again asked for its consideration, when, on motion of Mr. Sumner, it was referred to the Committee on Naval Affairs. January 20th, it was reported from the Committee by Mr. Hale, with amendments. February 14th, Mr. Grimes moved to proceed with its consideration. In opposing this motion, Mr. Sumner said: —

MR. PRESIDENT, — It seems to me that this bill is in all respects a misconception. There is nothing now to justify letters of marque and reprisal; and when Senators say that Massachusetts is interested in their issue, I repel the suggestion. Sir, Massachusetts is interested in putting down the Rebellion. She is also interested in clearing the sea of pirates. Such is her open and unquestionable interest, and to this end she is concerned in the employment of all possible agencies consistent with the civilization of our day. Massachusetts is interested in the enlargement of the marine, national and private, and I add, also, in the present enlistment of the private marine in the national service; but this is very different from the issue of letters of marque.

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I think the Senator from Iowa is misled by a phrase. He speaks of the militia of the sea. It is a captivating phrase, I admit; but the meaning is not entirely clear. The Senator finds it in privateers,—that is, private armed ships, belonging to private individuals, under the command of private persons, cruising against private commerce, and paid exclusively by booty. Such is his idea of a sea militia. I confess this is not very captivating to me. My idea of a sea militia is different. It is all the ships of the country, if the occasion require, under the national flag, in the service of the country as national ships, with the character of national ships, enjoying everywhere the immunities of national ships, and free from the suspicions always attaching to the privateer, wherever it appears. An enactment, authorizing the employment of the mercantile marine in the national service as part of the national navy, would be practical and reasonable. Such a marine might justly be called the militia of the sea; but I must protest against the deceptive militia of the Senator.

The bill was taken up by a vote of 31 yeas and 6 nays; but, after ordering the printing of amendments, it was postponed.

February 17th, it was taken up again, when Mr. Sumner spoke in reply to Mr. Grimes.

MR. PRESIDENT,—The Senator from Iowa [Mr. GRIMES], who has just taken his seat, ingeniously and elaborately vindicates a bill which, at least in one feature, is an innovation upon the original policy of our country; and, strange to say, while doing so, he pleads for what he calls our traditional policy. I, too, plead for our traditional policy, but not the policy of the Senator. And I plead also for a policy which, whether

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traditional or not, will provide for the national defence according to that best economy which takes counsel of prudence as well as of courage.

The Senator, with seeming triumph, asks if we can afford to declare that our whole private marine shall rot at the wharf. Clearly not, and nobody proposes to declare so, although we might as well do this as recklessly provoke war which must drive our commerce from the ocean, — if in no other way, by the increased rates of insurance. I would secure for our private marine the amplest opportunity, that it may continue without interruption to plough every sea with its keels, and that, wherever it appears, it may find its accustomed welcome. The policy of the Senator has no such promise.

All will concur in any practical measure at this time for the increase of our strength on the ocean. To this end my vote shall not be wanting. But to my mind it is clear to demonstration that the measure proposed is not practical in character, that it promises no result which cannot be reached better in another way, while it is almost sure to bring upon the country additional embarrassment. It may be bold, but I am sure it is not prudent, nor is there in it economy of any kind.

This bill is entitled, "Concerning Letters of Marque, Prizes, and Prize Goods." The title is borrowed from the two statutes of 1812 and 1813. It is, in plain terms, a bill to authorize *Privateers*, — that is, private armed vessels licensed to cruise against the commerce of an enemy, and looking to booty for support, compensation, and salary. It is by booty that owners, officers, and crews are to be paid. Booty is the motive power and life-spring. Such is this bill on its face, without going

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into detail. Surely a bill of this character ought not to pass without strong reason.

Looking at the bill more closely, it is found to have two distinct features: *first*, as a new agency against the Rebellion; *secondly*, as a provision for privateers in any future war. I regard these two features as distinct. They may be considered separately. One may be right, and the other wrong. One may be adopted, and the other rejected.

So far as the bill promises substantial help in putting down the Rebellion without more than countervailing mischief, it may properly be entertained. But what can it do against the Rebellion? And where is the policy or necessity on which it is founded? If Senators think that the bill can do any good now, I am sure they listen to their hopes rather than to the evidence. Why, Sir, the Rebels, against whom you would cruise, are absolutely without commerce. Pirate ships they have, equipped in England, armed to the teeth, and unleashed upon the sea to prey upon us; but there is not a single bottom of theirs that can afford the booty which is the pay and incentive of the privateer. It would be hardly more irrational to enlist private armed ships against the King of Dahomey.

I know it is said that our navy is too small, and that more ships are needed, not only for transportation, but also to increase and strengthen the blockade, or to cruise against pirates. Very well. Hire them, and put them in commission as Government ships, with the immunities, the responsibilities, and the character of such ships. There can be no difficulty in this; and, better still, there will be no difficulty afterwards. This is simple and practical.

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But, while I see no probable good from launching privateers upon the ocean to cruise against a commerce that does not exist, and to be paid by a booty that cannot be found, I see certain evils which I am anxious to avoid for the sake of my country, especially at this moment. I think that I cannot be mistaken in this anxiety.

It is well known, that, according to ancient usage and the Law of Nations, every privateer is entitled to belligerent rights, one of which is that most difficult, delicate, and dangerous right, the much disputed Right of Search. There is no Right of War with regard to which nations are more sensitive, — and no nation has been more sensitive than our own, while none has suffered more from its exercise. By virtue of this right, every licensed searover is entitled on the ocean to stop and overhaul all merchant vessels under whatever flag. If he cannot capture, he can at least annoy. If he cannot make prize, he can at least make trouble, and leave behind a sting. I know not what course the great neutral powers may adopt, nor do I see how they can undertake to set aside this ancient right, even if they smart under its exercise. But when I consider that these powers have already by solemn convention — I refer, of course, to the Congress of Paris in 1856 — renounced the whole system of privateers among themselves, I confess my fears that they will not witness with perfect calmness the annoyance to which their commerce will be exposed. And now, Sir, mark my prediction. Every exercise upon neutral commerce of this terrible Right of Search will be the fruitful occasion of misunderstanding, bickering, and controversy, at a moment when, if my voice could prevail, there should be nothing to interfere with that

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accord, harmony, and sympathy which are due from civilized states to our Republic in its great battle with Barbarism. Even if we are not encouraged to expect these things from Europe, I hope that nothing will be done by us to put impediments in their way. Justly sensitive with regard to our own rights, let us respect the sensibility of others.

It is not enough to say that we have an unquestioned right to issue letters of marque. Rights, when exercised out of season or imprudently, may be changed into wrongs. It was a maxim of ancient jurisprudence, *Sic utere tua, ut alienum non lædas*, and I think that this maxim, at least in spirit, is applicable to the present occasion. Our right may be clear; but, if its exercise would injure or annoy others, especially without corresponding advantage to ourselves, we shall do well, if we forbear to exercise it.

Thus far I have considered that part of the bill which provides for privateers against the Rebels; but I cannot quit this branch of the question without calling attention again to the scenes that must ensue, if these privateers are let loose. Picture to yourselves the ocean traversed by licensed rovers seeking prey. The Dutch admiral carried a broom at his mast-head as the boastful sign that he swept the seas. The privateer might carry a scourge. Wherever a sail appears, there is chase; the signal gun is fired, and the merchantman submits to visitation and search. Delay is the least of the consequences. Contention, irritation, humiliation ensue, all calculated to engender ill-feeling, which, beginning with individuals, may embrace country and government. I do not say that such an act, even harshly exercised upon neutral commerce, will bring upon us further

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war, but I would not try the experiment. The speaking-trumpet of a reckless privateer may contribute to that discord which is the herald of bloodshed itself.

But, Sir, even if you think it worth while to authorize privateers against the Rebels, to cruise against an imaginary commerce, in quest of an imaginary booty, why not stop there? The measure would not be wise, but it might find seeming apology in the present condition of affairs. The bill of the Committee, and also the amendment of the Senator from Iowa, go much further. It is a general bill, authorizing privateers, not merely against the Rebels, but also against foreign nations in future wars, in the discretion of the President. I quote from the bill of the Committee.

"That, whenever war exists or has been declared between the United States and any other nation, and during the present Rebellion, the President of the United States is hereby authorized to issue to private vessels of the United States commissions or letters of marque and general reprisal, in such form as he may think proper."

Mark the language, "whenever war exists." I am not ready to say that these words give the President power to declare the existence of war without the intervention of Congress; but I object to the whole clause on account of its generality. And the substitute of the Senator is obnoxious to the same objection. It says: —

"That, *in all domestic and foreign wars*, the President of the United States is authorized to issue to private armed vessels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper."

This is a general provision, by which the President is authorized to issue letters of marque, not only to aid in

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putting down the present Rebellion, but also "in all domestic and foreign wars" which may occur hereafter. I will not say that any such general, prospective provision, although clearly a departure from that traditional policy which the Senator professes to uphold, is positively unconstitutional; but I am sure that it is contrary to the spirit of the Constitution. To me it seems obvious that the Constitution contemplated the special action of Congress on every occasion for the exercise of this power. This was the safeguard against excess or blunder. Such a power was not to be exercised hastily or inconsiderately, but with full and special consideration. It was not to be exercised all at once and in the lump, but as the exigency occurred in individual cases. And Congress, which was empowered to declare war, had the further power, in the same way and with similar solemnities, to give the war this additional feature, if, under the circumstances, it thought best. This great power was not handed over indefinitely to the President, to be wielded at will, but was lodged in Congress. If Congress is not insensible to the spirit of the Constitution, it will never hand it over to the President, as now proposed.

Even in England, where the power to declare war is lodged with the sovereign in council, it seems that in point of fact letters of marque are regulated by special Acts of Parliament on the breaking out of war. This is stated by Chitty, in his work on the Prerogatives of the Crown.

"By various statutes, *enacted during every war*, the Lord High Admiral, or the Commissioners of the Admiralty, are empowered to grant commissions, or, as they are also called, letters of marque and reprisals, to the owners of ships, ena-

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bling them to attack and take the property of his Majesty's enemies, which statutes contain, also, various provisions as to the prizes captured. (See 29 George II. c. 34; 19 George III. c. 67; 43 George III. c. 160; 45 George III. c. 72.)"[1]

Obviously recognizing this principle, which is so entirely consistent with reason and that wisdom which is the strength of nations, our country thus far in its history has declined to pass any general prospective law authorizing letters of marque. This is our traditional policy, which the Senator seeks to overturn. The statute authorizing letters of marque in 1812 expired with the war. It was not general or prospective. Is there any reason now that we should depart from this policy? Is there any good to be accomplished by such departure? It is strange that at this moment, when other nations renounce privateering, we should rush forward and ostentatiously declare it part of our political system, — I might almost say, an element of our political life. Pray, if this declaration were of such importance, why has it been so long postponed? Generations, jealous guardians of all our national rights, have passed away, leaving the statute-book without any such voice. It did not occur to them that the national defence or the national honor required it. And yet the discovery is suddenly made that this is a mistake, or that our predecessors were all wrong, especially in not announcing to the world that in the event of war privateers will be let loose.

As there is no foreign war in which we are now engaged, this provision is prospective and minatory, so far as foreign nations are concerned. It is notice to avoid any question with us, under penalty of depredations

[1] Chitty's Prerogatives of the Crown, p. 42.

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by privateers. If not a menace, it is very like one. I do not know that it will be so interpreted by those to whom it is addressed, but I am sure that it can do no good; and just in proportion as it is so interpreted, it will be worse than useless. A menace is as ill-timed between nations as between individuals.

I do not dwell now on the irrational character of privateering, but I seize the occasion to declare my deliberate judgment that our country may yet find, to its cost, that this cherished weapon is a two-edged sword. A nation with an extensive commerce cannot afford to invite the hazard of its employment. Thus, in the event of war with a power inferior to ourselves in commerce, as Portugal, or Spain, or France, the increased rates of insurance would make it impossible for us to keep our ships afloat, while all our profits on the ocean would be appropriated by those nations happily still at peace. The very superiority of our commerce would be a disadvantage, inasmuch as we should be more exposed. For instance, in a war with Portugal or Spain we should stake gold against copper, and even in a war with France it would be gold against silver. If this prospect pleases, then Senators will vote for a measure which may be called *Privateering made easy; or, how to do it without Congress.*

Nor do I discuss the immorality and brutality too naturally engendered by a system whose inspiration is booty. Here I content myself with the words of General Halleck, in his excellent summary of International Law.

"But, even with these precautions, privateering is usually accompanied by abuses and enormous excesses. The use of privateers, or private armed vessels under letters of marque

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and reprisal, has often been discussed by publicists and text-writers on International Law, and has recently been made the subject of diplomatic correspondence and negotiation between the United States and the principal European powers. The general opinion of text-writers is, that privateering, though contrary to national policy and the more enlightened spirit of the present age, is, nevertheless, allowable under the general rules of International Law. *It leads to the worst excesses and crimes, and has a most corrupting influence upon all who engage in it,* but cannot be punished as a breach of the Law of Nations. *The enlightened opinion of the world is most decidedly in favor of abolishing it,* and recent events lead to the hope that all the commercial nations of both hemispheres will unite in no longer resorting, in time of war, to so barbarous a practice."[1]

There is another American authority I ought not to omit. I refer to Chancellor Kent, who in his much quoted Commentaries has recorded his judgment. If I chose to cross the ocean, I might add indefinitely to this testimony; but I confine myself to our own countrymen, so that you shall see privateering as judged by Americans. Here are the words of the great jurist.

"As a necessary precaution against abuse, the owners of privateers are required, by the ordinances of the commercial states, to give adequate security that they will conduct the cruise according to the laws and usages of war and the instructions of the Government, and that they will regard the rights of neutrals, and bring their prizes in for adjudication. These checks are essential to the character and safety of maritime nations. *Privateering, under all the restrictions which have been adopted, is very liable to abuse.* The object is not fame or chivalric warfare, but plunder and profit.

[1] Halleck's International Law, pp. 391, 392.

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The discipline of the crews is not apt to be of the highest order. *and privateers are often guilty of enormous excesses, and become the scourge of neutral commerce.* They are sometimes manned and officered by foreigners, having no permanent connection with the country, or interest in its cause. This was a complaint made by the United States, in 1819, in relation to irregularities and acts of atrocity committed by private armed vessels sailing under the flag of Buenos Ayres. *Under the best regulations, the business tends strongly to blunt the sense of private right and to nourish a lawless and fierce spirit of rapacity.*" [1]

It is well known that these were the sentiments of the founders of our Republic, which, in its early treaty with Prussia, took the lead in denouncing the whole system of privateering. Is it not better to follow this example, until positive, irresistible exigencies of war compel us to depart from it? If we cannot do this, let us at least keep from affording new facilities to an offensive system. What our country denounced in other days should not now be proclaimed and glorified.

MR. GRIMES. The Senator will allow me to inquire when it was that this nation denounced the system of privateering.

MR. SUMNER. By the treaty of 1785.

MR. GRIMES. The Prussian treaty, I suppose.

MR. SUMNER. The Prussian treaty.

MR. GRIMES. I should like to know the purport of that denunciation. Was it not a mere stipulation that we should not prey on the commerce of that nation?

MR. SUMNER. It was a stipulation to the effect, that, in any war between the United States and Prussia, neither party should commission privateers to depredate on the commerce of the other.

[1] Kent's Commentaries on American Law, Vol. I. p. 97.

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MR. GRIMES. A stipulation that I suppose this Government could very easily make, because Prussia has no commerce.

MR. SUMNER. I wish the treaty had been such as to afford a stronger example; but it must be accepted as the judgment of our country at that time; and to my mind it is a practical denunciation of privateering, worthy of the illustrious character by whom it was negotiated, who was none other than Benjamin Franklin. But this treaty is not all. I do not forget how Jefferson wrote to France, "The benevolence of this proposition is worthy of the nation from which it comes, and our sentiments on it have been declared in the treaty to which you are pleased to refer, as well as in some others which have been proposed,"[1] thus testifying to our treaty and to his own sentiments; and, at a later day, that John Quincy Adams, in his instructions to Mr. Rush, of July 28, 1823, directing him to negotiate a treaty with Great Britain for the abolition of privateering, declared that this was "an object which has long been dear to the hearts and ardent in the aspirations of the benevolent and the wise, an object essentially congenial to the true spirit of Christianity"; and he adopted the earlier declaration of Franklin, "It is time, it is high time, for the sake of humanity, that a stop were put to this enormity."[2]

MR. GRIMES. I am speaking now of the declaration which the Senator has seen fit to designate as a national denunciation of privateers, made in 1785, though the Constitution, which was made in 1787, expressly reserved to Congress the

[1] Letter to M. de Ternant, October 16, 1792: Writings, Vol. III. p. 477.

[2] Wheaton's Elements of International Law, ed. Lawrence, (Boston, 1863,) p. 631, note.

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power to issue letters of marque and reprisal. Taking these two facts, the treaty made in 1785 and the Constitution made in 1787, how can it be asserted that the ancient policy of the Government is against privateering, and that we have nationally denounced it?

MR. SUMNER. The Senator will pardon me, if I say that I know no better denunciation than that of a treaty negotiated by Franklin. A treaty is the act of the nation, and testifies to the sentiments of the nation. If the same denunciation did not find place in more important treaties, it is reasonable to suppose that it was not acceptable to the other contracting parties. It is an historic fact, that Franklin sought to embody this denunciation in the very treaty by which our independence was acknowledged, and thus to associate it with our national being.[1] Indeed, it was a standing offer from our Government to foreign powers.[2] Unquestionably the Constitution gives Congress the power to issue letters of marque, but the reason is obvious: because privateering was recognized at that time as a proper agency of war. The framers of the Constitution did not divest the government they created of a power which belonged to other governments according to the existing usage of nations. In recognizing this power, they express no opinion upon its character. For that we must go to the treaty, and to the words and efforts of Franklin, Jefferson, and John Quincy Adams, speaking and acting officially for the nation, — all but Franklin subsequent to the Constitution.

[1] See Letter to Richard Oswald, enclosing propositions to abolish privateering, January 14, 1783: Works, ed. Sparks, Vol. IX. pp. 466, 467.

[2] See Letter of Franklin to Benjamin Vaughan, March 14, 1785: Ibid., Vol. II. p. 485.

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And now, Sir, at the risk of repetition, I enumerate my objections to this bill.

1. It proposes to cruise against a non-existent commerce, for the sake of a non-existent booty.

2. It accords to private individuals the belligerent right of search, which must be fruitful of trouble in our relations with the great neutral powers.

3. It gives to the President, in his discretion, the power to issue letters of marque in any future wars, without any further authority of Congress, when this power should always wait for the special authority of Congress on the declaration of war.

4. It is in the nature of a menace to foreign nations, and therefore worse than useless.

5. It vitalizes and legalizes a system which civilization always accepted with reluctance, and our own country was one of the earliest and most persistent to denounce.

6. It will give us a bad name in history.

It does all this without accomplishing any substantial good. If it be said that ships are needed for transportation, or for the blockade, or in order to pursue pirates on the sea, then, I repeat, let the Government hire them. The way is easy, and it is also the way of peace. To this end I offer a substitute for the present bill, which will secure to the Government all the aid it can desire, without the disadvantage or shame of a measure which can be justified only by overruling necessity. I will read the substitute.

"That the Secretary of the Navy be authorized to hire any vessels needed for the national service, and, if he sees fit, to put them in charge of officers commissioned by the United States, and to give them in every respect the character of national ships."

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If Senators desire a militia of the seas, here it is, — a sea militia, precisely like the land militia, mustered into the service of the United States, under the command of the United States, and receiving rations and pay from the United States, instead of sea-rovers, not mustered into the national service, not under national command, and not receiving rations or pay from the nation, but cruising each for himself, according to his own will, without direction, without concert, simply according to the wild temptation of booty. Such a system on land would be rejected at once. Nobody would call it a militia. Do not sanction it now on the ocean; or, if you are disposed to sanction it, call it not a militia of the seas.

The bill was then amended, on motion of Mr. Sherman, by limiting it to "three years from the passage of this Act."

Mr. Sumner then moved to strike out the words "in all domestic and foreign wars," and to insert "to aid in putting down the present Rebellion," so that it would read, —

"That, *to aid in putting down the present Rebellion*, the President of the United States is authorized to issue to private armed vessels of the United States commissions," &c.

On this motion he remarked: —

MR. PRESIDENT, — The question is now presented precisely, whether the Senate will confine this bill in operation to the war in which we are actually engaged for the suppression of the Rebellion, or make it prospective in character, applicable to some war in the unknown future, to some country not named, to some exigency not now understood, and therefore, in its nature, a notice or warning, if not a menace, to all countries.

This is the precise question: Shall the bill be confined to our own time, to this day, to this hour, to something

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we can see, to what is actually before us; or shall it be extended also to the future, to something we cannot see, to what is not actually before us, and with regard to which we can have no knowledge, unless we listen to our fears?

If the words are introduced as a menace, then are they out of place and irrational. Suppose any such words in the legislation of Great Britain or France at a moment when they might be interpreted as applicable to us, who can doubt their injurious effect upon public opinion here? A brave and intelligent people will not bend before menace, nor can any such attempt affect a well-considered national policy. All history and reason show that such conduct is more irritating than soothing. Sir, if you are in earnest, as I cannot doubt, to cultivate those relations of peace and good-will with foreign nations which are in themselves a cheap defence, you must avoid all legislation which can be misinterpreted, especially everything which looks like menace.

I cannot pretend to foresee the future. I know not that other wars may not be in store for us, that we may not be called to confront other powers, in alliance, perhaps, with our Rebels, and to make still greater efforts. All this may come; but I pray not. If it does come, then let us meet its duties and responsibilities like Senators; but do not rush forward recklessly, like the bully with his bludgeon, ready to strike wherever there is a head. I do not believe in such legislation; nor do I believe in any legislation providing new facilities for a war, or tending to produce irritation and distrust. Prepared always for the future, I would not challenge it. Preparation and provocation are widely different. Nor would I do anything out of season. There was charac-

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teristic wisdom in the remark of the venerable Chief Justice of England, Sir Matthew Hale, when he said that "we must not jump before we get to the stile." It seems to me that Senators who are pressing this bill forget this time-honored injunction, and try to make their country take a jump prematurely.

. . . . . .

You have just listened to the Senator from California [Mr. McDOUGALL], announcing that perhaps before the next meeting of Congress there may be foreign war; and you have not forgotten his elaborate speech only the other day, when he openly challenged war with France. I ask Senators, if, at this critical moment, they are ready to follow him in his effort to carry us in that direction. For myself, I protest against it. I am heart and soul for putting down this Rebellion without playing into the hands of Rebels. Now it must be plain to all that every word calculated to draw or drive any foreign government into alliance with the Rebellion does play into the hands of Rebels. Senators may be willing to distract the attention of the country from our single object, to impair the national force, and help surrender all to the uncertainties and horrors of accumulating war. Let me not enter into their counsels. It is not my habit to shrink from responsibility; personal risks I accept willingly; but I confess anxiety that my country should not rush abroad in quest of new dangers, whose only effect will be to increase the national calamities.

The amendment of Mr. Sumner was lost, — Yeas 13, Nays 22.

Mr. Sumner then moved to strike out the words authorizing the President to "make all needful rules and regulations," and to insert —

"The provisions of the Act of Congress, approved on the 26th day of

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June, 1812, entitled 'An Act concerning letters of marque, prizes, and prize goods,' and of the Act of Congress, approved on the 27th day of January, 1813, entitled 'An Act in addition to the Act concerning letters of marque, prizes, and prize goods,' are hereby revived, and shall be in force in relation to all that part of the United States where the inhabitants have been declared in a state of insurrection, and the vessels and property to them belonging."

Mr. Sumner explained the amendment.

IT will be observed, that, by the amendment already adopted, the President alone, without the coöperation of Congress, is empowered to make what are called all needful rules and regulations for the government and conduct of these privateers, and for the adjudication and disposal of prizes and salvages made by them. But formerly it was not so ordered. No such large power was ever before vested in the President. By the statute of June 26, 1812, a system was provided, in seventeen sections, for the government of letters of marque, prizes, and prize goods. These sections relate to the formalities required from persons applying for letters of marque, the bonds to be given, and the sureties, how the captured property shall be forfeited, the distribution of the prize money, the distribution of salvage, how the prize shall be brought in for adjudication, regulations concerning prisoners found on board of prize vessels, instructions for the privateers, bounty for destroying the enemy's vessels, instructions to the commanding officers of privateers to keep journals, how owners of privateers are punishable for violating the revenue laws of the United States, how offences on board private armed vessels are punishable; also the commissions of collectors and consuls upon prize goods, and the uses to which they shall be applied. Here is a statute, in itself a code, containing provisions exclusively applica-

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ble to these important matters, all determined by Congress in advance; but it is now proposed that Congress shall abdicate, leaving to the President alone this large power.

I call attention to one matter in the statute, namely, "How offences on board private armed vessels shall be punished." It is enacted, "that all offences committed by any officer or seaman on board any such vessel having letters of marque and reprisal, during the present hostilities against Great Britain, shall be tried and punished in such manner as the like offences are or may be tried and punished, when committed by any person belonging to the public ships of war of the United States." [1]

I would ask if it is in the power of the President merely by regulation to determine how offences on board private armed vessels shall be tried and punished? I take it that Congress must deal directly with this question. I am sure that it is unwise for Congress to renounce a duty belonging to it obviously under the Constitution, and which in former times it exercised. Senators sometimes complain that great powers are assumed by the President; but, unless I misread this bill, they are about to confer on him powers large, indeed, beyond precedent. There is, in the first place, the power to declare whether, in case of war with a foreign nation, letters of marque shall be issued, — a high prerogative, in times past reserved exclusively to Congress. But, not content with this, they would confer upon him plenary powers, as legislator, with regard to everything to be done by the letter of marque, and with regard, also, to its possible prizes. As once the French monarch

[1] Statutes at Large, Vol. II. p. 768, sec. 15.

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exclaimed, "The State, it is I!" — so, when we have conferred these powers, one after another, on the President, I think he may make a similar exclamation.

This amendment was also lost.

Mr. Sumner then moved the following substitute for the pending bill: —

"That the Secretary of the Navy be authorized to hire any vessels needed for the national service, and, if he see fit, to put them in charge of officers commissioned by the United States, and to give them in every respect the character of national ships."

THE proposition on which a vote is now asked has all that is good in the pending measure, without any of the unquestionable disadvantages. I am unwilling to trespass upon the Senate, and would hope that I am not too earnest; but the question, to my mind, is of no common character.

The Senator who presses this measure seeks to employ private enterprise in all wars, domestic or foreign: I show him how it can be done. He seeks to enlist the private marine of the country in the public service: I show him how it can be done. He seeks to contribute at this moment to the national force: I show him how it can be done. Say not that I am against the employment of private enterprise. Nor say that I would allow our private marine to rot at the wharf. Nor say that I would begrudge anything needed by the national force. To this end the Senate cannot go further than I. All that the Senator would do I would do, but in a way to avoid those embarrassments and difficulties necessarily incident to privateering, and so as to be in harmony with the civilization of our age. Nor shall it be said that I shrink from any of the responsibilities which belong to us with regard to foreign nations; but I

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desire to say, that among the highest responsibilities which any can recognize is that of doing nothing needlessly which shall add to existing troubles or give the country a new burden.

In conclusion, let me once more remind you that every privateer upon the ocean carries the right of search. Wherever he sails, he is authorized to overhaul neutral ships in search of contraband, or, it may be, to determine if the voyage is to break the blockade. A right so delicate and grave I would reserve to the Government, to be exercised only by national ships. I cannot err, when I insist that it shall be intrusted to those only whose position, experience, and relations with the Government give assurance that it will be exercised with wisest discretion.

If, in order to secure private enterprise and to enlist all its energies, it were necessary to have privateers, then the argument of the other side might be entitled to weight. But all that you desire can be had without any such resort, and without any drawback or disadvantage. Let the Secretary of the Navy hire private ships, wherever he can find them, and put them in commission as national ships, with the rations, pay, officers, and character of national ships. This will be simple and most effective. I am at a loss for any objection to it: I can see none.

I may be mistaken, Sir, but I speak in frankness. To my mind the question between the two propositions is too clear for argument. On one side it is irrational, barbarous, and fruitless, except of trouble. On the other side you have practical strength, and the best assurance of that prudence which is the safeguard of peace. Between the two let the Senate choose.

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This amendment was also lost, — Yeas 8, Nays 28.

The bill then passed the Senate, — Yeas 27, Nays 9. March 2d, it passed the House of Representatives without a division, and was subsequently approved by the President.

Failing in Congress, Mr. Sumner renewed his opposition with President Lincoln, urging upon him the impolicy of any action under the law. He advised most strenuously that no commissions should be issued, and that the law should be allowed to remain a dead letter. The President was so much impressed by these representations that he invited Mr. Sumner to attend the next meeting of his Cabinet and make them there. When Mr. Sumner doubted the expediency of such a step, as possibly giving rise to comment, the President requested him to see the members of his Cabinet individually, which he did. No commissions were ever issued, and the attempt soon subsided.

This effort to set afloat privateers created anxiety among our friends in England. Mr. Bright wrote : —

"I hope the President will remain firm against the letters of marque, so long as peace is preserved. They will do no good, and only tend to war. I was sorry your fight against the bill was in vain."

A letter from Mr. Bates, the intelligent American partner in the London house of the Barings, confirmed the President in his determination. Another letter from the same source concurs with Mr. Bright in condemning the project.

"I am very glad that anything I have written has had any effect in stopping the issue of letters of marque, for I am convinced that their issue would have led to a war, and would have given those who in this country wish for war an opportunity through the press to make a war popular. It would, further, have been playing into the hands of the Confederates, who are doing all they can to embarrass the relations between this country and the United States. It is the last card the Confederates have to play."

The Act of Congress authorizing letters of marque has since expired by its own limitation.

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APPOINTMENTS TO THE NAVAL ACADEMY.

REMARKS IN THE SENATE, ON THE BILL TO REGULATE THE APPOINTMENT OF MIDSHIPMEN TO THE NAVAL ACADEMY, FEBRUARY 16, 1863.

THE Senate having under consideration the bill to regulate the appointment of midshipmen, Mr. Anthony, of Rhode Island, moved the following amendment: —

"And to be selected by the Senators, Representatives, and Delegates on the ground of merit and qualification, to be ascertained by an examination of the candidates, and that the Secretary of the Navy be authorized to make the regulations under which such examinations shall be conducted, not inconsistent with the provisions of this Act."

Mr. Sumner sustained the amendment.

BECAUSE these appointments are conferred upon youth, or, if you please, upon boys, it seems to me that they are too often regarded as of little moment. In reality, they are among the most important appointments under Government. They are appointments for life; since, beginning with the youth or boy, they end only at death, it may be as captain, commodore, or admiral, supported always at the expense of the country, and with increasing emoluments corresponding to increasing rank.

Therefore do I think that the Government cannot be too careful in securing the best youths, and I welcome cordially the proposition of the Senator from Rhode Island. I think it entirely practicable, and also most

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important. I hope the Senate will adopt it. I cannot doubt that such places should be given only to the most worthy, discarding personal or political favoritism; but there must be a rule by which to ascertain the most worthy.

The amendment was lost, having only 6 yeas against 32 nays.

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EXEMPTION OF CLERGYMEN FROM MILITARY CONSCRIPTION.

REMARKS ON THE CONSCRIPTION LAW, FEBRUARY 16, 1863.

THE Senate having under consideration the bill for enrolling and calling out the national forces, Mr. Sumner moved as an amendment that clergymen or ministers of the Gospel be exempted from conscription. Then ensued brief comments.

MR. POMEROY. They will fight.

MR. MCDOUGALL. I will ask the Senator from Massachusetts to modify his proposition so as not to include the Methodist clergy, because they are a fighting clergy.

MR. HOWARD. I think the loyal clergy are among the most fighting portion of our population, quite as reliable as any other.

MR. WILSON. I do hope we are not to exempt lawyers, or clergymen, or any other class.

MR. FESSENDEN. It is now provided in the bill that those who cannot go may be excused on paying a fine.

Mr. Sumner followed.

MR. PRESIDENT, — I would not have this proposition treated with levity. I do not say that it has been. Suffice it for me that I make it in sincerity, because I think the exception worthy of place in a permanent statute regulating the military system of our country.

I shall not be led into debate, but you will let me declare my conviction that the proper duty of the clergyman, if he joins the army, is as chaplain, ministering to the sick, the wounded, the dying, and teaching the living how to die. At the same time, I can well under-

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stand that there may be occasions when another service will be required, or when an irresistible impulse may change the chaplain into the soldier.

An eminent writer of our age, the late Lord Macaulay, has said positively that a clergyman should never fight. The motion which I make has no such extent. It simply proposes that the law shall not require him to fight.

In former days bishops have worn coats of mail and led embattled forces, and there are many instances where the chaplain has assumed all the duties of the soldier.

At the famous Battle of Fontenoy, where the French, under Marshal Saxe, prevailed over the united armies of England, Austria, and Holland, there was a British chaplain, with a name subsequently historic, who by military service acquired the title of "The Fighting Chaplain of Fontenoy." This was the renowned Edinburgh professor, Adam Ferguson, author of the "History of the Roman Republic." And only a few days ago I presented a petition for a pension from the widow of Rev. Arthur B. Fuller, chaplain, who fell fighting at Fredericksburg. But these instances are exceptional. Legislation cannot be founded on exceptions.

In reply to other Senators, Mr. Sumner spoke again.

THE Senate is engaged in maturing a permanent law, — not merely for a year, not only for the present Rebellion, not for any exigency of the day, but an enduring statute, — and as such it will be a record of the sentiments and the civilization of our time. But I am not disposed to present this question on any ground of sentiment, though such an appeal would be difficult to answer.

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Time is precious, and I content myself with another appeal, — I mean to practical experience. I think I do not err, when I say, that, in the history of the Christian world, you will not find a single evidence of a country where clergymen have been compelled to serve as soldiers, — at least I do not recall such instance, — while the most military country of modern times has refused to sanction the compulsion. I have before me the well-considered military statute of France, where everything was matured with the greatest care and consideration, and so as to secure the largest amount of service. No exemption was recognized, except after conscientious debate and for sufficient reason. Therefore this statute is testimony of the highest character. But here I find exemption, not only of the clergy, including all denominations recognized by the State, but also of students of divinity preparing to enter the ministry. If not absolutely indifferent to practical experience, the example of a military people like the French, especially in exemptions from conscription, cannot be neglected. I doubt if we shall lose by following it.

Mr. Wilson then said : —

"If they cannot bear arms, if they cannot perform military duty, they at any rate can furnish a substitute, or pay the sum provided for, be that more or less."

Mr. Sumner replied : —

I DO not understand that our clergy throughout the United States are rich. In some of the larger towns they may be comparatively so, but in the country such is not the case. Goldsmith's village preacher, "passing rich with forty pounds a year," — that is, about two hundred dollars, — was not unlike large numbers of the clergy

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among us. Now, Sir, to compel persons living on such a small allowance to pay two hundred and fifty dollars for a substitute is really asking too much. I think it unreasonable; and I think my colleague, who is pressing this bill with so much energy, would adapt himself better to the sentiment of the country and of civilization, if he admitted this natural and humane exemption into his list.

The amendment was lost.

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PROTEST AGAINST FOREIGN INTERVENTION, AND DECLARATION OF NATIONAL PURPOSE.

CONCURRENT RESOLUTIONS OF CONGRESS, REPORTED IN THE SENATE FEBRUARY 28, 1863.

FROM the beginning of the Rebellion there had been constant anxiety lest foreign powers, especially England and France, should intervene in some way, by diplomacy, if not by arms. As early as July, 1861, Russia made an offer of its good offices between the contending parties, with warm expressions for the integrity of the Union; but these were promptly declined.[1] In October, 1862, the French Emperor instructed his ambassadors at London and St. Petersburg to propose the coöperation of the three Cabinets in obtaining a suspension of arms for six months, and, if required, to be prolonged further, during which every act of war, direct or indirect, should provisionally cease, on sea and land. The Cabinets of England and St. Petersburg both declined the proposition.[2] The French Emperor then proceeded alone. By a despatch of M. Drouyn de Lhuys, the Minister of Foreign Affairs, to M. Mercier, the Minister at Washington, dated January 9, 1863, his good offices were tendered to the United States, in the view of facilitating negotiations between the contending parties; but these were declined by Mr. Seward, in a despatch to Mr. Dayton at Paris, February 6, 1863.[3]

Meanwhile there were suggestions in the English press, and also in Parliament, of intervention in some form. Sometimes it was proposed that the independence of the Rebels should be acknowledged.

The proposition from the French Emperor and the reply of Mr. Seward, being communicated to the Senate, were, on motion of Mr. Sumner, referred to the Committee on Foreign Relations, and February 28th he reported the following resolutions.

[1] Lawrence, Commentaire sur les Éléments du Droit International, etc., de Henry Wheaton, Tom. II. p. 467, Part. II. ch. 1.

[2] Ibid., pp. 477–479.

[3] Ibid., pp. 482, 488.

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Concurrent Resolutions of Congress concerning Foreign Intervention in the existing Rebellion.

WHEREAS it appears from the diplomatic correspondence submitted to Congress, that a proposition, friendly in form, looking to pacification through foreign mediation, has been made to the United States by the Emperor of the French, and promptly declined by the President; *and whereas* the idea of mediation or intervention in some shape may be regarded by foreign governments as practicable, and such governments, through this misunderstanding, may be led to proceedings tending to embarrass the friendly relations which now exist between them and the United States; *and whereas*, in order to remove for the future all chance of misunderstanding on this subject, and to secure for the United States the full enjoyment of that freedom from foreign interference which is one of the highest rights of independent states, it seems fit that Congress should manifest its convictions thereon: *Therefore* —

Resolved (the House of Representatives concurring), That, while in times past the United States have sought and accepted the friendly mediation or arbitration of foreign powers for the pacific adjustment of *international* questions, where the United States were party of the one part and some other sovereign power party of the other part; and while they are not disposed to misconstrue the natural and humane desire of foreign powers to aid in arresting *domestic* troubles, which, widening in influence, have afflicted other countries, especially in view of the circumstance, deeply regretted by the American people, that the Rebel blow aimed at the

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national life has fallen heavily upon the laboring population of Europe; yet, notwithstanding these things, Congress cannot hesitate to regard every proposition of foreign interference so far unreasonable and inadmissible, that its only explanation can be found in a misunderstanding of the true state of the question, and of the real character of the war in which the Republic is engaged.

Resolved, That the United States are grappling with an unprovoked and wicked Rebellion, which is seeking the destruction of the Republic, that it may build a new power, whose corner-stone, according to the confession of its chiefs, shall be Slavery; that for the suppression of this Rebellion, thus saving the Republic and preventing the establishment of such a power, the National Government is employing armies and fleets, in full faith that the purposes of conspirators and rebels will be crushed; that, while engaged in this struggle, on which so much depends, any proposition from a foreign power, whatever form it take, having for object the arrest of these efforts, is, just in proportion to its influence, an encouragement to the Rebellion, and to its declared pretensions, and on this account is calculated to prolong and embitter the conflict, to cause increased expenditure of blood and treasure, and to postpone the much desired day of peace; that, with these convictions, and not doubting that every such proposition, although made with good intent, is injurious to the national interests, Congress will be obliged to look upon any further attempt in the same direction as an unfriendly act, which it earnestly deprecates, to the end that nothing may occur abroad to strengthen the Rebellion, or to weaken those relations of good-will

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with foreign powers which the United States are happy to cultivate.

Resolved, That the Rebellion, from its beginning, and far back even in the conspiracy which preceded its outbreak, was encouraged by hope of support from foreign powers; that its chiefs constantly represented the people of Europe as so far dependent upon regular supplies of the great Southern staple, that, sooner or later, their governments would be constrained to take side with the Rebellion in some effective form, even to the extent of forcible intervention, if the milder form did not prevail; that the Rebellion is now sustained by this hope, which every proposition of foreign interference quickens anew, and that without this life-giving support it must soon yield to the just and paternal authority of the National Government; that, considering these things, which are aggravated by the motive of the resistance thus encouraged, the United States regret that foreign powers have not frankly told the chiefs of the Rebellion that the work in which they are engaged is hateful, and that a new government, such as they seek to found, with Slavery as its acknowledged corner-stone, and with no other declared object of separate existence, is so far shocking to civilization and the moral sense of mankind that it must not expect welcome or recognition in the Commonwealth of Nations.

Resolved, That the United States, confident in the justice of their cause, which is the cause of good government and of human rights everywhere among men, anxious for the speedy restoration of peace, which shall establish tranquillity at home and remove all occasion of complaint abroad, and awaiting with well-assured trust the final suppression of the Rebellion, through

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which all these things, rescued from present peril, will be secured forever, and the Republic, one and indivisible, triumphant over its enemies, will continue an example to mankind, HEREBY ANNOUNCE, as their unalterable purpose, that the war will be vigorously prosecuted, according to the humane principles of Christian nations, until the Rebellion is overcome; and they reverently invoke upon their cause the blessing of Almighty God.

Resolved, That the President be requested to transmit a copy of these resolutions, through the Secretary of State, to the ministers of the United States in foreign countries, that the protest and declaration herein set forth may be communicated by them to the governments near which they reside.

March 3d, on motion of Mr. Sumner, the Senate proceeded to consider the resolutions. In reply to Mr. Powell, of Kentucky, he remarked: "The resolutions speak for themselves, and I content myself by simply asking for a vote." Then, in reply to Mr. Carlile, of West Virginia, he said: "These resolutions proceed from the spontaneous deliberations of the Senate Committee on Foreign Relations, without a suggestion or hint from the Secretary of State or from any member of the Administration; but I am able to state, that, since the resolutions have been reported, they have the entire and cordial approval of the Secretary of State, who has authorized me to say that he takes a special interest in their adoption by Congress."

The resolutions passed the Senate by a vote of 31 yeas to 5 nays. On the same day they passed the House of Representatives, — Yeas 103, Nays 28.

Being concurrent resolutions of the two Houses, and not a joint resolution, they were never submitted to the President for approval; but, according to the request in the last resolution, they were communicated by the Secretary of State in an official note to our ministers abroad.

The reception of these resolutions at the time will appear by an extract from the *Evening Post* of New York.

"Mr. Sumner's resolutions, which have so triumphantly passed the National Legislature, and which receive at the same time the cordial approval

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of the President and the Cabinet, will deepen and justify the feeling in our favor. They define our position with a distinctness that has not always been attained in our official acts. They describe boldly and vividly the nature of the Rebellion which has destroyed our peace, tracing it wholly to the ambition and selfishness of the Slaveholders, and warning foreign nations of the awful crime they commit in lending their aid to such an infamous assault upon all the principles of orderly government, all the rights of humanity, and all the best interests of Christian civilization. Every reflective mind in Europe will know, after reading them, that whatever encourages the Rebellion will encourage the most odious tyranny that human cupidity ever devised."

The speech on Foreign Relations, at New York, September 10, 1863,[1] was a vindication of these resolutions.

[1] *Post*, p 827.

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INEXPEDIENCY OF LETTERS OF MARQUE.

LETTER TO A CITIZEN OF NEW YORK, MARCH 17, 1863.

THE following letter, which appeared in the papers at the time, was written in the hope of preventing any action under the law of Congress authorizing letters of marque.

WASHINGTON, March 17, 1863.

MY DEAR SIR, — In the freedom of that conversation which I had with you as we drove to the Capitol recently, allow me for a moment to speak again on the question which interested us then. . . . .

I confess that I am anxious that the issuing of letters of marque should be avoided, not merely because it will give us a bad name without commensurate good, nor because it will be a departure from the early and often declared policy of our Government, which has not hesitated, by the pen of Benjamin Franklin and John Quincy Adams, to denounce privateering as an "enormity." but because it does not meet, in a practical way, the precise necessity of this time. People who advocate it are obviously misled by the experience of another generation, when we were at war with a nation whose commerce was a temptation and a reward to private enterprise. The case is so different now that the old agency is entirely inapplicable.

The privateer cruises for booty, which is in lieu of rations and pay to officers and men, and of hire and

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compensation to owners. But if the booty does not exist, or if it is in such inconsiderable quantity as to afford small chance of valuable prize, evidently you must find some other system of compensation; as this cannot be, you must abandon the idea of private enterprise stimulated and sustained by booty. An agency must be found applicable to the present case, precisely as in machinery a force is found best calculated to do the required work.

Now our present business is to help the Government capture the Alabama and her piratical comrades, and also to catch blockade-runners. But a letter of marque is not proper for this purpose, nor will the chance of booty be the best way to stimulate and sustain the cruiser, while, on the other hand, it is obvious that such a ship, invested with the belligerent right of search, in the quest of booty, will be tempted to exercise it on neutral commerce, and thus become the occasion of contention and strife with foreign powers.

Privateers have never been remarkable for the caution or reserve with which they employ belligerent rights. I would not exaggerate the troubles that might ensue; but when I think of these sea-rovers, with license to overhaul neutral ships and to inflict upon them visitation and search, I feel how much evil may ensue compared with the good. You would not threaten a whole street in order to catch a few robbers who had sought shelter in some of its recesses, nor would you burn down your house, according to the amusing story of Charles Lamb, in order to roast a pig.

It seems to be only according to common prudence, that private enterprise, if enlisted now, should be regulated by the object in view. To this end, it is not neces-

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sary that it should assume a form calculated to awaken solicitude. The way is simple. If citizens are willing to unite in efforts of the Government, let them place their ships at its disposal, to be commissioned as national ships, and let the Government, on its part, offer bounty and prize money, in addition to pay and rations, for the capture of the Alabama and her piratical comrades. The motive power will thus be adapted to the object, while our country will be saved from all chance of additional complication, and also from the stigma of reviving a policy which civilization condemns.

The argument of economy is sometimes pressed. But it is poor economy to employ an agency which in its very nature is inapplicable. Besides, I doubt if any success reasonably expected from such ships, called by the French *corsaires*, will be a compensation for the bad name they will give us, and the bad passions they will engender.

I hope I do not take too great a liberty in sending you this sequel to our conversation. At all events, you will be pleased to accept my best wishes, and believe me, my dear Sir, with much regard,

Very faithfully yours,

CHARLES SUMNER.

JOHN AUSTIN STEVENS, Jr., Esq., &c., &c., &c.

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UNITY FOR THE SAKE OF FREEDOM, AND FREEDOM FOR THE SAKE OF UNITY.

LETTER TO A PUBLIC MEETING AT CLEVELAND, OHIO, MAY 18, 1863.

WASHINGTON, May 18, 1863.

GENTLEMEN,— It will not be in my power to take part in the generous meeting to assemble at Cleveland, but I pray you to accept my thanks for the cordial invitation with which you have honored me.

If it were my privilege to speak on that occasion, I should urge upon my fellow-citizens everywhere the duty of *Unity for the sake of Freedom*, and also of *Freedom for the sake of Unity*. The two cannot be separated. They are mutually dependent. Let this people continue united, and Freedom must surely prevail. Let Freedom prevail, and this people cannot cease to be united.

With such a cause, there is but one side and one duty. Whoever is for the Unity of the Republic must be for Freedom, and whoever is for Freedom must be for the Unity of the Republic. It is vain to think that one can be advanced without the other. Whoever is against one is against the other, and whoever is lukewarm for one is lukewarm for the other. We must be fervid and strong for both.

This is not the time for doubt or hesitation. We

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must act at once and constantly, so that the Republic may be saved, while Slavery is scourged from this temple consecrated to Freedom. And this will be done.

Believe me, Gentlemen,
Very faithfully yours,

CHARLES SUMNER.

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PACIFIC RAILROAD.

LETTER TO MESSRS. SAMUEL HALLETT & Co., MAY 23, 1863.

MESSRS. HALLETT & Co. were associated with General Fremont in urging the Pacific Railroad. This letter was extensively circulated.

WASHINGTON, May 23, 1863.

GENTLEMEN, — I have always voted for the Pacific Railroad, and now that it is authorized by Congress I follow it with hope and confidence. It is a great work, but science has already shown it to be practicable.

Let the road be built, and its influence will be incalculable. People will wonder that the world lived so long without it.

Conjoining the two oceans, it will be an agency of matchless power, not only commercial, but political. It will be a new girder to the Union, a new help to business, and a new charm to life. Perhaps the imagination is most impressed by the thought of travel and merchandise winding their way from Atlantic to Pacific in one unbroken line; but I incline to believe that the commercial advantages will be more apparent in the opportunities the railroad will create and quicken everywhere on the way. New homes and new towns will spring up, making new demand for labor and supplies. Civilization will be projected into the forest and over

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the plain, while the desert is made to yield its increase. There is no productiveness to compare with that from the upturned sod which receives the iron rail. In its crop are school-houses and churches, cities and states.

In this vast undertaking coöperation of all kinds is needed, and it will be rewarded too. Capitalists, bankers, merchants, engineers, mechanics, miners, laborers, all must enlist. Perhaps there will be a place also for *the freedmen of this war*, although it seems to me that their services can be more effectively bestowed at home, as laborers and soldiers. But I see not why emigrants should not be invited from Europe to take part in this honorable service, and share the prosperity it will surely organize. Let them quit poverty, dependence, and wretchedness in their own country, for good wages here, with independence, and a piece of ground which each man can call his own.

Emigration will hasten the work; but, with or without emigration, it must proceed. Everywhere, from sunrise to sunset, the Rail and Wheel, which an eminent English engineer has pronounced "man and wife," will yet be welcomed, sure to become the parents of a mighty progeny.

I have the honor to be, Gentlemen,

Your faithful servant,

CHARLES SUMNER.

MESSRS. SAMUEL HALLETT & Co.

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UNION OF THE MISSISSIPPI AND THE LAKES BY CANAL.

LETTER TO A CONVENTION AT CHICAGO, MAY 27, 1863.

THE Convention was held June 2d.

WASHINGTON, May 27, 1863.

GENTLEMEN, — I resign most reluctantly the opportunity with which I am favored by your invitation, and shall try to content myself with reading the report of your powerful and well-organized meeting at Chicago, without taking part in it.

The proposition to unite the greatest navigable river of the world with the greatest inland sea is characteristic of the West. Each is worthy of the other. The idea of joining these together strikes the imagination as original. But the highest beauty is in utility, which will not be wanting here. With this union, the Gulf of Mexico will be joined to the Gulf of St. Lawrence, and the whole continent, from Northern cold to Southern heat, traversed by one generous flood, bearing upon its bosom untold commerce.

It is for the West to consider well the conditions of this enterprise, and the advantages it will secure. Let its practicability be demonstrated, and the country will command it to be done, as it has already commanded the opening of the Mississippi. Triumphant over the

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wickedness of an accursed Rebellion, we shall achieve another triumph, to take its place among the victories of Peace.

To this magnificent work Science will contribute her myriad resources. But there is something needed even to quicken and inspire science: it is the unconquerable will, which does not yield to difficulties, but presses forward to overcome them. No word is used with more levity than the word "impossible." A scientific professor, in a public address, declared the navigation of the Atlantic by steam "impossible." Within a few weeks it was done. The British Prime-Minister declared the construction of a canal between the Mediterranean and the Red Sea "impossible." The Pacha of Egypt, with French engineers, is now doing it. Mirabeau was right, when he protested against the use of this word as simple stupidity. But I doubt if the word will be found in any Western dictionary.

Believe me, Gentlemen, with much respect,
Very faithfully yours,

CHARLES SUMNER.

To Hon. JAMES ROBB, I. N. ARNOLD, and others of the Committee.

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THE ISSUES OF THE WAR.

DEDICATION OF A NEW EDITION OF THE SPEECH ON THE BARBARISM OF SLAVERY,[1] JULY 4, 1863.

TO THE YOUNG MEN OF THE UNITED STATES I DEDICATE THIS NEW EDITION OF A SPEECH ON THE BARBARISM OF SLAVERY, IN TOKEN OF HEARTFELT GRATITUDE TO THEM FOR BRAVE AND PATRIOTIC SERVICE RENDERED IN THE PRESENT WAR FOR CIVILIZATION.

IT is now more than three years since I deemed it my duty, in the Senate, to expose the Barbarism of Slavery. This phrase, though common now, was new then. The speech was a reply, strict and logical, to assumptions of Senators, asserting the "divine origin" of Slavery, its "ennobling" character, and that it was the "black marble keystone" of our national arch. Listening to these assumptions, which were of daily recurrence, I felt that they ought to be answered; and considering their effrontery, it seemed to me that they should be answered frankly and openly, by exhibiting Slavery *as it really is*, without reserve, — careful that I should "nothing extenuate, nor set down aught in malice." This I did.

In that debate was joined the issue still pending in the Trial by Battle. The inordinate assumptions for Slavery naturally ripened in Rebellion and War. If Slavery were in reality all that was claimed by its

[1] See, *ante*, Vol. V. p. 1.

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representatives, they must have failed in duty, if they did not vindicate and advance it. Not easily could they see a thing so "divine" and so "ennobling," constituting the "black marble keystone" of our national arch, discredited by popular vote, even if not yet consigned to sacrifice.

The election of Mr. Lincoln was a judgment against Slavery, and its representatives were aroused.

Meanwhile, for more than a generation, an assumption of Constitutional Law, hardly less baleful, had become rooted side by side with Slavery, so that the two shot up in rank luxuriance together. It was assumed, that, under the Constitution, a State was privileged at any time, in the exercise of its own discretion, to withdraw from the Union. This absurdity found little favor at first, even among the representatives of Slavery. To say that two and two make five could not be more irrational. But custom and constant repetition gradually produced an impression, until, at last, all the maddest for Slavery were the maddest also for this disorganizing ally.

It was then, conjoined with this constitutional assumption, that the assumption for Slavery grew into noxious vigor, so that, at last, when Mr. Lincoln was elected, it broke forth in flagrant war; but the war was declared in the name of State Rights.

Therefore there are two *apparent* rudiments to this war. One is Slavery, and the other is State Rights. But the latter is only a cover for the former. If Slavery were out of the way, there would be no trouble from State Rights.

The war, then, is for Slavery, and nothing else. It is an insane attempt by arms to vindicate the lordship

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asserted in debate. With madcap audacity it seeks to install this Barbarism as the truest Civilization. Slavery is announced as the "corner-stone" of the new edifice. This is enough.

The question is presented between Barbarism and Civilization, — not merely between two different forms of Civilization, but between Barbarism on the one side and Civilization on the other side.

Such is the issue, simply stated. On the one side are women and children at the auction-block, families rudely separated, human flesh lacerated and seamed by the bloody scourge, labor extorted without wages; and all this frightful, many-sided wrong is the declared foundation of a mock Commonwealth. On the other side is the Union of our fathers, with the image of Liberty on its coin and the sentiment of Liberty in its Constitution, now arrayed under a patriotic Government, which insists that no such mock Commonwealth, having such declared foundation, shall be permitted on the national territory, purchased with money and blood, to impair the unity of our jurisdiction, and to insult the moral sense of mankind.

Therefore the battle waged by the Union is for Civilization itself, and it must have aid and God-speed from all not openly for Barbarism. Every one must give his best efforts, and especially the young men to whom I now appeal.

CHARLES SUMNER.

WASHINGTON, 4th July, 1863.

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LET COLORED MEN ENLIST.

LETTER TO A CONVENTION AT POUGHKEEPSIE, NEW YORK, JULY 13, 1863.

BOSTON, July 13, 1863.

DEAR SIR, — It will not be in my power to take part in the proposed meeting at Poughkeepsie. But I am glad it has been called, and I trust it will be successful.

To me it has been clear from the beginning that the colored men would be needed in this war. I never for a moment doubted that they would render good service. And thus far the evidence in their favor is triumphant. Nobody now questions their bravery or capacity for discipline. All that can be said against them is that they are not "white."

But they have a special interest in the suppression of the Rebellion. The enemies of the Union are the enemies of their race. Therefore, in defending the Union, they defend themselves even more than other citizens; and in saving the Union, they save themselves.

I doubt if in times past our country could have justly expected from colored men any patriotic service. Such service is the return for protection. But now that protection has begun, the service should begin also. Nor should relative rights and duties be weighed with nicety. It is enough that our country, aroused at last to a sense

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of justice, seeks to enroll colored men among its defenders.

If my counsels could reach such persons, I would say, Enlist at once. Now is the day, and now the fortunate hour. Help to overcome your cruel enemies battling against your country, and in this way you will surely overcome those other enemies, hardly less cruel, here at home, who still seek to degrade you. This is not the time to hesitate or to higgle. Do your duty to our common country, and you will set an example of generous self-sacrifice which must conquer prejudice and open all hearts.

Accept my thanks for the invitation with which you have honored me, and believe me, dear Sir,

Very faithfully yours,

CHARLES SUMNER.

EDWARD GILBERT, Esq.

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OUR FOREIGN RELATIONS:

SHOWING

PRESENT PERILS FROM ENGLAND AND FRANCE, NATURE AND CONDITION OF INTERVENTION BY MEDIATION AND ALSO BY RECOGNITION, IMPOSSIBILITY OF ANY RECOGNITION OF A NEW POWER WITH SLAVERY AS A CORNER-STONE, AND WRONGFUL CONCESSION OF OCEAN BELLIGERENCE.

SPEECH BEFORE THE CITIZENS OF NEW YORK, AT THE COOPER INSTITUTE, SEPTEMBER 10, 1863. WITH APPENDIX.

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MARCUS. Quæro igitur a te, Quinte, sicut illi solent: Quo si civitas careat, ob eam ipsam causam, quod eo careat, pro nihilo habenda sit, id estne numerandum in bonis?

QUINTUS. Ac maximis quidem.

MARCUS. Lege autem carens civitas estne ob id ipsum habenda nullo loco?

QUINTUS. Dici aliter non potest.

MARCUS. *Necesse est igitur legem haberi in rebus optimis.*

QUINTUS. Prorsus assentior.

CICERO, *De Legibus*, Lib. II. cap. 5.

I have told,
O Britons! O my brethren! I have told
Most bitter truth, but without bitterness.
Nor deem my zeal or factious or mistimed;
For never can true courage dwell with them
Who, playing tricks with conscience, dare not look
At their own vices.

COLERIDGE, *Sibylline Leaves: Fears in Solitude.*

'T is therefore sober and good men are sad
For England's glory, seeing it wax pale
And sickly.

COWPER, *The Task*, Book V. 509–511.

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The Government condemns in the highest degree the conduct of any of our citizens who may personally engage in committing hostilities at sea against any of the nations parties to the present war, and will exert all the means with which the laws and Constitution have armed them to discover such as offend herein and bring them to condign punishment. . . . . The practice of commissioning, equipping, and manning vessels in our ports to cruise on any of the belligerent parties is equally and entirely disapproved; and the Government will take effectual measures to prevent a repetition of it. — JEFFERSON, *Letter to Mr. Hammond, May* 15, 1793: Writings, Vol. III. p. 559.

One spot remains which oceans cannot wash out. The slavery of the African race, which the North Americans had inherited from the ancient monarchy, was adopted and fondly cherished by the new Republic. . . . . The logic of the Constitution declared that all men were free: the pride and avarice of the slave-owners, disowning the image of the Creator and the brotherhood of nature, degraded men of a dark color, and even all the descendants of their sons and daughters, to a level with oxen and horses. But as oxen and horses never combine, and have no sense of wronged independence, oxen and horses are better treated than the men and women of African blood. . . . . But neither the philosophical dogma of the authors of the Constitution, nor the strict pedantry of law, can stifle the cry of outraged humanity, nor still the current of human sympathy, nor arrest forever the decrees of Eternal Justice. — LORD JOHN RUSSELL, *Life and Times of Charles James Fox*, Vol. I. pp. 364, 365.

To this condition the Constitution of this Confederacy reduces the whole African race; and while declaring these to be its principles, the founders claim the privilege of being admitted into the society of the nations of the earth, — principles worthy only of being conceived and promulgated by the inmates of the infernal regions, and a fit constitution for a confederacy in Pandemonium. *Now, as soon as the nature of this Constitution is truly explained and understood, is it possible that the nations of the earth can admit such a Confederacy into their society? Can any nation calling itself civilized associate, with any sense of self-respect, with a nation avowing and practising such principles?* Will not every civilized nation, when the nature of this Confederacy is understood, come to the side of the United States, and refuse all association with them, as, in truth, they are, *hostes humani generis?* For the African is as much entitled to be protected in the rights of humanity as any other portion of the human race. *As to Great Britain, her course is, in the nature of things, already fixed and immutable. She must sooner or later join the United States in this war, or be disgraced throughout all future time;* for the principle of that civilization which this Confederacy repudiates was by her — to her great glory, and with unparalleled sacrifices — introduced into the code of Civilization, and she will prove herself recreant, if she fails to maintain it. — JOSIAH QUINCY, *Address before the Union Club of Boston, February* 27, 1863.

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If British merchants look with eagerness to the event of the struggle in South America, no doubt they do so with the hope of deriving advantage from that event. But on what is such hope founded? On the diffusion of beggary, on the maintenance of ignorance, on the confirmation of slavery, on the establishment of tyranny in America? No; these are the expectations of Ferdinand. The British merchant builds his hopes of trade and profit on the progress of civilization and good government, on the successful assertion of Freedom, — of Freedom, that parent of talent, that parent of heroism, that parent of every virtue. The fate of South America can only be accessory to commerce as it becomes accessory to the dignity and the happiness of the race of man. — SIR JAMES MACKINTOSH, *Speech in Parliament, on the Foreign Enlistment Bill, June* 10, 1819.

When a power comparable only to Thugs, buccaneers, and cannibals tries to thrust its hideous head among nations, and claims the protection and privileges of International Law, — a power which rose against the freest rule on earth for the avowed motive of propagating the worst form of Slavery ever known, having no legitimate complaint, or, if it had, certainly trying no constitutional means of redress, but plunging at once into arms, and that when the arsenals had been emptied and the fortresses seized by the treason of office-holders, — I hold it to be an offence against law, order, and public morality for a statesman whose words carry weight to speak at all of such a power without declaring abhorrence of it. — PROFESSOR FRANCIS W. NEWMAN, *Letter to Mr. Gladstone, December* 1, 1862.

I blame men who are eager to admit into the Family of Nations a state which offers itself to us, based upon a principle, I will undertake to say, more odious and more blasphemous than was ever heretofore dreamed of in Christian or Pagan, in civilized or in savage times. The leaders of this revolt propose this monstrous thing: that over a territory forty times as large as England the blight and curse of Slavery shall be forever perpetuated. — JOHN BRIGHT, *Speech at Birmingham, December* 18, 1862.

We are already culpable for a part of this bloody war; for, better informed or less indifferent, less selfish or more adroit, above all, more wise, more sincerely the friends of what is right, we could, from London and Paris, have thrown into the midst of the combatants this declaration, which would have rendered the conflict ephemeral: "Never will either England or France, Christian nations, liberal nations, recognize the existence of a people seeking to found Liberty and Independence on Slavery!" The misfortune of the times, in obscuring our judgment, in dulling our passion for the beautiful ideas of Freedom, has, then, already made us participants, in some respect, in the rebellion of the people of the South, and, in order to mask what was gross and low in our voluntary error, we set up vague reasons of commercial policy and general policy at which our fathers would have blushed..... The truth is, that the revolt of the South is the most impudent and most odious insult that has ever been offered to the ideas of modern Civilization. — JOURNAL DES ÉCONOMISTES, Avril, 1864, Tom. XLII. p. 88.

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THE following speech[1] was delivered at the invitation of the New York Young Men's Republican Union, at Cooper Institute, on the 10th of September, 1863. The announcement that Mr. Sumner had consented to address the citizens of New York on a subject so momentous attracted an audience numbering not less than three thousand persons, among whom were most of the acknowledged representatives of the intelligence, wealth, and influence of the metropolis. Long before the hour appointed for the delivery of the speech, the entrance-doors were besieged by an impatient and anxious crowd, who, as soon as the gates were opened, filled the seats, aisles, lobbies, and platform of the vast hall, leaving at least an equal number to return home, unable to gain an entrance to the building.

Of the following named gentlemen, who were invited to occupy seats upon the platform, a majority were present, while in the auditorium were hundreds of equally prominent citizens, who preferred to retain seats near the ladies whom they had escorted to the meeting.

Francis Lieber, LL.D., George Bancroft, Major-General Dix, Horace Greeley, George Griswold, John E. Williams, W. W. DeForest, Cornelius Vanderbilt, Abram Wakeman, Rev. Dr. Tyng, Cyrus W. Field, Alexander T. Stewart, Horace Webster, LL.D., Joseph Lawrence, John A. Stevens, Pelatiah Perit, James A. Hamilton, H. B. Claflin, T. L. Thornell, Colonel William Borden, William Goodell, Rev. Dr. Thompson, Rev. Dr. Gillette, William Cullen Bryant, Major-General Fremont, A. A. Low, John Jay, Henry Grinnell, James Gallatin, Cephas Brainerd, William B. Astor, William H. Aspinwall, Oliver Johnson, W. M. Evarts, William Curtis Noyes, Rev. Dr. Hitchcock, Shepherd Knapp, William H. Webb, James W. Gerard, Anson Livingston, Frank W. Ballard, Isaac H. Bailey, George B. Lincoln, General Harvey Brown, Rev. Dr. Shedd, Rev. Dr. Durbin, Peter Cooper, Major-General Doubleday, Charles H. Marshall, Marshall O. Roberts, Judge Bradford, Charles H. Russell, E. Delafield Smith, Hamilton Fish, Robert B. Minturn, Rev. Dr. Cheever, F. B. Cutting, Charles King, LL.D., Rev. Dr. Ferris, Ex-Governor King, George Folsom, Samuel B. Ruggles, S. B. Chittenden, Charles T. Rodgers, Mark Hoyt, Lewis Tappan, Rev. Dr. Storrs, Rev. Dr. Adams, Rev. Dr. Vinton, Daniel Drew, Francis Hall, George

[1] This Introduction is copied from the pamphlet edition published in New York by the Young Men's Republican Union.

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William Curtis, Judge Edmonds, Rev. Dr. Asa D. Smith, Truman Smith, William A. Hall, Prosper M. Wetmore, B. F. Manierre, George P. Putnam, E. C. Johnson, Rev. Dr. Osgood, Elliott C. Cowdin, Rev. T. Ralston Smith, J. S. Schultz, M. Armstrong, Jr., D. A. Hawkins, Edgar Ketchum, Joseph Hoxie, Rev. Dr. Bellows, General S. C. Pomeroy, James McKaye, George F. Butman, David Dudley Field.

David Dudley Field, Esq., who had been selected by the Committee as Chairman of the meeting, introduced Mr. Sumner to the audience in the following words.

"LADIES AND GENTLEMEN, — At no former period in the history of the country has the condition of its foreign relations been so important and so critical as it is at this moment. In what agony of mortal struggle this nation has passed the last two years we all know. A rebellion of unparalleled extent, of indescribable enormity, without any justifiable cause, without even a decent pretext, stimulated by the bad passions which a barbarous institution had originated, and encouraged by expected and promised aid from false man among ourselves, has filled the land with desolation and mourning. During this struggle it has been our misfortune to encounter the evil disposition of the two nations of Western Europe with which we are most closely associated by ties of blood, common history, and mutual commerce. Perhaps I ought to have said the evil disposition of the governments, rather than of the nations; for in France the people have no voice, and we know only the imperial will and policy, while in England the masses have no powers, the House of Commons being elected by a fraction of the people, and the aristocratic classes being against us from dislike to the freedom of our institutions, and the mercantile classes from the most sordid motives of private gain. To what extent this evil disposition has been carried, what causes have stimulated it, in what acts it has manifested itself, and what consequences may be expected to follow from it in future, will be explained by the distinguished orator who is to address you this evening. His position as Chairman of the Senate Committee on Foreign Relations has given him an acquaintance with the subject equal, if not superior, to that of any other person in the country. He needs no introduction from me. His name is an introduction and a passport in any free community between the Atlantic and the Pacific seas; therefore, without saying more, I will give way for CHARLES SUMNER, of Massachusetts."

Amid the most marked demonstrations of satisfaction, expressed frequently by long-continued applause and hearty cheers, Mr. Sumner proceeded in the delivery of his discourse. The meeting adjourned about an hour before midnight.

Three New York newspapers and two in Boston printed the entire speech on the day following its delivery.

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SPEECH.

FELLOW-CITIZENS, — From the beginning of the war in which we are now engaged, the public interest has alternated anxiously between the current of events at home and the more distant current abroad. Foreign Relations have been hardly less absorbing than Domestic Relations. At times the latter seem to wait upon the former, and a packet from Europe is like a messenger from the seat of war. Rumors of foreign intervention are constant, now in the form of mediation, and then in the form of recognition; and more than once the country has been summoned to confront the menace of England, and of France, too, in open combination with Rebel Slavemongers battling in the name of Slavery to build an infamous power on the destruction of this Republic.

It is well for us to turn aside from battle and siege at home, from the blazing lines of Vicksburg, Gettysburg, and Charleston, to glance for a moment at the perils from abroad: of course I mean from England and France; for these are the only foreign powers thus far moved to intermeddle on the side of Slavery. The subject to which I invite attention may want the attraction of waving standards or victorious marches; but, more than any conflict of arms, it concerns the civilization of the age. If foreign powers can justly interfere against

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human freedom, this Republic will not be the only sufferer.

There is always a natural order in unfolding a subject, and I shall try to pursue it on this occasion, under the following heads.

First. The perils to our country from foreign powers, especially foreshadowed in the unexpected and persistent conduct of England and France since the outbreak of the war.

Secondly. The nature of foreign intervention by mediation, with the principles applicable thereto, illustrated by historic instances, showing especially how England, by conspicuous, wide-spread, and most determined intervention to promote the extinction of African Slavery, *is irrevocably committed against any act or policy that can encourage this criminal pretension.*

Thirdly. The nature of foreign intervention by recognition, with the principles applicable thereto, illustrated by historic instances, showing that by the practice of nations, and especially by the declared sentiments of British statesmen, *there can be no foreign recognition of an insurgent power, where the contest for independence is still pending.*

Fourthly. The moral impossibility of foreign recognition, even if the pretended power be *de facto* independent, where it is composed of Rebel Slavemongers seeking to found a *new* power with Slavery for its declared "corner-stone." Pardon the truthful plainness of the terms I employ. I am to speak not merely of Slaveholders, but of people to whom Slavery is a passion and a business, therefore Slavemongers, — now in rebellion for the sake of Slavery, therefore Rebel Slavemongers.

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Fifthly. The absurdity and wrong of conceding *ocean* belligerence to a pretended power, which, in the first place, is without a Prize Court, so that it cannot be an ocean belligerent *in fact*,—and, in the second place, even if ocean belligerent *in fact*, is of such an odious character that its recognition is a moral impossibility.

From this review, touching upon the present and the past, leaning upon history and upon law, enlightened always by principles which are an unerring guide, our conclusion will be easy.

I.

THE perils to our country, foreshadowed in the action of foreign powers since the outbreak of the war, first invite attention.

There is something in the tendencies of nations which must not be neglected. Like individuals, nations influence each other; like the heavenly bodies, they are disturbed by each other in their appointed orbits. Apparent even in peace, this becomes more so in the convulsions of war, whether from the withdrawal of customary forces or from their increased momentum. It is the nature of war to enlarge as it continues. Beginning between two nations, it gradually widens its circle, ingulfing other nations in its fiery maelström. Such is human history. Nor is it different, if the war be for independence. Foreign powers may for a while keep out of the conflict; but examples of history show how difficult this has been.

There was liberty-loving Holland, which, under that illustrious character, William of Orange, predecessor and

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exemplar of our Washington, rose against the dominion of Spain, upheld by the bigotry of Philip the Second, and the barbarity of his representative, Alva; but the conflict, though at first limited to the two parties, was not slow to engage Queen Elizabeth, who lent to this war of independence the name of her favorite Leicester and the undying heroism of Sidney, while Spain retorted by the Armada. The United Provinces of Holland, in their struggle for independence, were the prototype of the United States of America, which I need not remind you drew into their contest the arms of France, Spain, and Holland. In the rising of the Spanish colonies there was less interposition of other nations, doubtless from the distant and outlying position they occupied, although not beyond the ambitious reach of the Holy Alliance, whose purposes were so far thwarted by Mr. Canning, backed by the declaration of President Monroe, known as the Monroe doctrine, that the British statesman felt authorized to boast that he had called a new world into existence to redress the balance of the old. Then came the struggle of Greece, which, after painful years darkened by massacre, but relieved by exalted self-sacrifice, shining with names, like Byron and Bozzaris, that cannot die, challenged the powerful interposition of England, France, and Russia. The independence of Greece was hardly acknowledged, when Belgium, renouncing the rule of the Netherlands, claimed hers also, and here again the great powers of Europe were drawn into the contest. Then came the effort of Hungary, inspired by Kossuth, which, when about to prevail, aroused the armies of Russia. There was also the contemporaneous effort of the Roman Republic, under Mazzini, which, almost successful, evoked the

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bayonets of France. We have only recently witnessed the resurrection of Italy, inspired by Garibaldi, and directed by Cavour; but it was not accomplished, until Louis Napoleon, with well-trained legions, bore the imperial eagles into battle.

Such are famous instances, being so many warnings. Ponder them, and you will see the tendency, the temptation, the irresistible fascination, or the commanding exigency under which foreign nations have been led to participate in conflicts for independence. I do not dwell on the character of these interventions, although mostly in the interest of Human Freedom. It is only as examples to put us on our guard that I adduce them. The footprints all lead one way.

Even our war is not without its warning. If thus far in its progress other nations have failed to intervene, they have not succeeded in keeping entirely aloof. The foreign trumpet has not sounded yet, but more than once the cry has come that we should soon hear it, while incidents too often occur, exhibiting abnormal watchfulness of our affairs and uncontrollable passion or purpose to intermeddle in them, with signs of unfriendly feeling. This is applicable especially, if not exclusively, to England and France.

And at the outset, as I am about to speak frankly, I quote the words of an eminent English statesman and orator, who felt it his duty to criticize Spain. From his place in the House of Commons, whence his words flew over Europe, Mr. Canning, Minister of Foreign Affairs, said: —

"If, in what I have now further to say, I should bear hard upon the Spanish Government, I beg that it may be observed, that, unjustifiable as I shall show their conduct

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to have been — contrary to the Law of Nations, contrary to the law of good neighborhood, contrary, I might say, to the laws of God and man — with respect to Portugal, still I do not mean to preclude a *locus pœnitentiæ*, a possibility of redress and reparation." [1]

Fellow-citizens, you shall decide, on hearing the story, if we also have not complaints; but I, too, hope that all will end well.

(1.) One act of the British Cabinet stands foremost as an omen of peril, — foremost in time, foremost also in the magnitude of its consequences. Though plausible in form, it is none the less injurious or unjustifiable. I refer to that inconsiderate Proclamation, in the name of the Queen, as early as 13th May, 1861, which, after raising Rebel Slavemongers to equality with the National Government, solemnly declares "neutrality" between the two coëqual parties: as if the recognition of equality was not an insult to the National Government, and the declaration of neutrality was not a moral absurdity, offensive to reason and all those precedents which make the glory of the British name. Neutrality is equality; neutrality is equity. It is both. But is there just equality between these two parties? Can neutrality between such parties, especially at the very outset, be regarded as equity? Even if the Proclamation could be otherwise than improper at any time in such a rebellion, it was worse than a blunder at that early date. The apparent relations between the two powers were more than friendly. Only a few months had passed since the youthful heir to the British throne was wel-

[1] Speech on the King's Message relative to the Affairs of Portugal, December 12, 1826: Speeches, Vol. VI. p. 79.

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comed everywhere, except in Richmond, as in the land of kinsmen. And yet, at once, after tidings of the Rebel assault on Fort Sumter, before the National Government had begun to put forth its strength, and even without waiting for the arrival of our newly appointed minister, who was known to be at Liverpool, on his way to London, the Proclamation was suddenly launched. I doubt if any well-informed person, who reads Mr. Dallas's despatch of 2d May, 1861, recounting a conversation with the British Secretary, will undertake to vindicate it in point of time. "I informed him," the minister reports, "that Mr. Adams had apprised me of his intention to be on his way hither in the steamship Niagara, which left Boston on the 1st May, and that he would probably arrive in less than two weeks, by the 12th or 15th instant. His Lordship acquiesced in the expediency of disregarding mere rumor, *and waiting the full knowledge to be brought by my successor.*"[1] And yet the blow was struck without waiting. The alacrity of this concession was unhappy, for it bore an air of defiance, or at least of heartlessness, towards an ally of kindred blood engaged in the maintenance of its traditional power against an infamous pretension. More unhappy still was it that the good genius of England did not save this historic nation, linked with so many triumphs of Freedom, from a fatal step, which, under the guise of "neutrality," was a betrayal of Civilization itself.

It is difficult to exaggerate the consequences of this precipitate, unfriendly, and immoral concession, which has been, and still is, an overflowing fountain of mischief

[1] Papers relating to Foreign Affairs, 1861, p. 84: Executive Documents, 37th Cong. 2d Sess., Senate, No. 1.

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and bloodshed, — "*hoc fonte derivata clades*," — *first*, in what it vouchsafes to Rebel Slavemongers on sea and in British ports, and, *secondly*, in the removal of impediments from British subjects ready to make money out of Slavery, — all of which has been declared by undoubted British authority. Lord Chelmsford, of professional renown as Sir Frederick Thesiger, now an ex-Chancellor, used these words recently in the House of Lords: "If the Southern Confederacy had not been recognized by us as *a belligerent power*, he agreed with his noble and learned friend [Lord BROUGHAM], that any Englishman aiding them by fitting out a privateer against the Federal Government *would be guilty of piracy*."[1] But this is changed by the Queen's Proclamation. For Rebel Slavery there is recognition; for the British subject opportunity of trade. For Rebel Slavery there is fellowship and equality; for the British subject a new customer, to whom he may lawfully sell Armstrong guns, and other warlike munitions of choicest British workmanship, and, as Lord Palmerston tells us, even ships of war, to be used in behalf of Slavery.[2] What was unlawful is suddenly made lawful, while the ban is taken from an odious felony. It seems superfluous to add, that such concession, thus potent in reach, must have been a direct encouragement and over-

[1] Debate on the Queen's Proclamation, May 16, 1861: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXII. col. 2084.

[2] The cynical frankness of Earl Russell reveals the prominence of this consideration. In autobiographical comments, at a later day, he says: "During the discussion of the questions relating to the Alabama and the Shenandoah, it was the great object of the British Government to preserve for the subject the security of Trial by Jury, *and for the nation the legitimate and lucrative trade of ship-building*." — *Selections from Speeches of Earl Russell, 1817 to 1841, and from Despatches, 1859 to 1865*, with Introductions by Earl Russell, Vol. II. p. 266.

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ture to the Rebellion. Slavery itself was exalted, when barbarous pretenders, battling to found a new power in its hateful name, without so much as a single port on the ocean where a prize could be carried for condemnation, were yet, *in face of this essential deficiency*, swiftly acknowledged as *ocean* belligerents, while, as consequence, their pirate ships, cruising for plunder in behalf of Slavery, were acknowledged as national ships, entitled to equal immunities with the national ships of the United States. This simple statement is enough. It is vain to say that the concession was a "necessity." There may have been strong temptation to it, constituting, perhaps, imagined necessity, as with many there is strong temptation to Slavery itself. But such concession to Rebels fighting for Slavery can be vindicated only as Slavery is vindicated. As well declare "neutrality" between Right and Wrong, between Good and Evil, with concession to Evil of belligerent rights, and then set up the apology of "necessity."

If he is an enemy who does what pleases an enemy, according to the rule borrowed by Grotius from the Christian lawyer of the age of Justinian,[1] then did England become the enemy of the National Union, for this most fruitful concession rejoiced beyond measure the Rebel enemy.

(2.) An act so essentially unfriendly in character, and also in the alacrity with which it was done, too clearly indicated an unfriendly sentiment, easily stimulated to menace of war. And this menace was not wanting, when, soon afterwards, the two Rebel emissaries on board the Trent were seized by a patriotic, brave com-

[1] "Apud Agathiam legimus, hostem esse qui faciat quod hosti placet." — GROTIUS, *De Jure Belli ac Pacis*, Lib. III. cap. xvii. § 3, 2.

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mander, whose highest fault was, that, in the absence of instructions from his own Government, he followed British precedents only too closely. This accident — for such it was, and nothing else — assumed at once overshadowing proportions. With indefensible exaggeration, it was changed by the British nation, backed by the British Government, into a *casus belli*, — as if an unauthorized incident, obviously involving no question of self-defence, could justify war between two civilized nations. And yet, in the face of positive declaration from the United States, communicated by our minister at London, that it was an accident, the British Government *made preparations to take part with Rebel Slavery*, and fitly began such an ignoble proceeding by keeping back from the British people the official despatch of 30th November, 1861, where our Government, after announcing that Captain Wilkes had acted "without any instructions," expresses a "trust that the British Government would consider the subject in a friendly temper," and promises "the best disposition" on our part.[1] It is painful to recall this exhibition. But it belongs to history, and we cannot forget the lesson it teaches.

(3.) This tendency to espouse the side of Slavery appears in small things as well as great, becoming more marked in proportion to the inconsistency involved. Thus, where two British subjects, "suspected" of participation in the Rebellion, were detained in a military prison without the benefit of *Habeas Corpus*, the British minister at Washington was directed to complain of their detention *as inconsistent with the Constitution of the United States*, of which this intermeddling power

[1] Mr. Seward to Mr. Adams: Executive Documents, 37th Cong. 2d Sess., Senate, No. 8, pp. 2, 3.

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assumed to be "expounder"; and the case was accordingly presented on this ground.[1] But the British Cabinet, with instinct to mix in our war, if only by diplomatic notes, seemed to have forgotten the British Constitution, under which, in 1848, with consent of all the party leaders, Brougham and Lansdowne, Peel and Disraeli, *Habeas Corpus* was suspended in Ireland, and the Government authorized to apprehend and detain "such persons as they shall suspect." The bill sanctioning this exercise of power went through all its stages in the House of Commons on one day, and the next day went through all its stages in the House of Lords without a dissenting vote. It is hard to believe that Lord Russell, who complains of our detention of "suspected" persons as inconsistent with the Constitution of the United States, was the minister who introduced this bill, and on that occasion used these words: "I believe in my conscience that this measure is calculated to prevent insurrection, to preserve internal peace, *to preserve the unity of this empire*, and to secure the throne of these realms and the free institutions of this country."[2]

(4.) The complaint about *Habeas Corpus* was hardly answered, when another was solemnly presented, founded on the legitimate effort to complete the blockade of Charleston, by sinking at the mouth of its harbor ships laden with stone, usually known as "the stone blockade." Did anybody find fault with the Russians for sinking their men-of-war in the harbor of Sebastopol? Nor is the allegation of permanent damage to the harbor tenable in the present advanced state of engineering

[1] Lord Lyons to Mr. Seward, October 14, 1861: Papers relating to Foreign Affairs, 1861, p. 169: Executive Documents, 37th Cong. 2d Sess., Senate, No. 1.

[2] Hansard's Parliamentary Debates, 3d Ser., Vol. C. col. 714.

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science. A London journal, not inferior to any other in character and ability, has recently recognized the normal character of such a proceeding by mentioning it as a possible defence for Calcutta against naval force, saying: "The ascent of the river without pilots is impossible; for the Government can alter all the channels in a night by *merely sinking a couple of loaded schooners*."[1] In common times her Majesty's Government would shrink from such intermeddling. It could not forget that history, early and late, and especially English history, abounds in similar incidents: that, as long ago as 1436, at the siege of Calais by the Duke of Burgundy, and also in 1628, at the memorable siege of Rochelle by Cardinal Richelieu, ships laden with stone were sunk in the harbor; that, during the war of the Revolution, in 1779, six vessels were sunk by the British commander in the Savannah River, not far from this very Charleston, as a protection against the approach of the French naval forces; that, in 1804, under direction of the British Admiralty, there was an attempt, notorious from contemporary jest,[2] to choke the entrance into the harbor of Boulogne by sinking stone vessels; and that, in 1809, the same blockade of another port was recommended to the Admiralty by no less a person than Lord Dundonald, saying: "Ships filled with stones would ruin forever the anchorage of Aix, and some old vessels of the line well loaded would be excellent for

[1] Spectator, January 4, 1862, p. 17.

[2] Sir Walter Scott, in correspondence with his friend Ellis, undertook to explain how a whole edition of Godwin's Life of Chaucer had vanished, by conjecturing, that, "as the heaviest materials to be come at, they have been sent on the secret expedition, planned by Mr. Phillips and adopted by our sapient Government, for blocking up the mouth of our enemy's harbors." — *Letter to George Ellis, Esq., March* 19, 1804: Lockhart's Life of Scott, Vol. I. p. 414.

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the purpose."[1] This complaint by the British Cabinet becomes doubly strange, when it is considered that one of the most conspicuous treaties of modern history contains solemn exactions from France by England herself, that the harbor of Dunkirk, whose prosperity was regarded with jealousy, should be permanently "filled up," so that it could no longer furnish those hospitalities to commerce for which it was famous. This was the Treaty of Utrecht, in 1713. The Triple Alliance, four years later, compelled France to stipulate again that nothing should be omitted "which Great Britain could think necessary for the entire destruction of the harbor"; and the latter power was authorized to send commissioners as "ocular witnesses of the execution of the treaty." These humiliating provisions were renewed in successive treaties down to the Peace of Versailles, in 1783, when the immunity of that harbor was recognized with American Independence. And yet it is Great Britain, thus persistent in closing ports and rivers, that now interferes to warn us against a stone blockade in a war to put down Rebel Slavery.

(5.) The same propensity and the same inconsistency appear in another instance, where an eminent peer, once Foreign Secretary, did not hesitate, from his place in Parliament, to charge the United States with making medicines and surgical instruments contraband, "contrary to all the common laws of war, *contrary to all precedent, not excluding the most ignorant and barbarous ages.*"[2] Thus exclaims the noble Lord. Now I have nothing to say of the propriety of making these things

[1] Letter to Lord Mulgrave April 3, 1809: Autobiography of a Seaman, Vol. I. pp. 363, 364.

[2] Earl of Malmesbury, Speech in the House of Lords, February 5, 1863: Hansard's Parliamentary Debates, 3d Ser., Vol. CLIX. col. 53.

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contraband. My simple object is to exhibit the spirit against which we are to guard. It is difficult to understand how such a display could be made in face of the historic fact, exposed in the satire of Peter Plymley, that Parliament, in 1808, by large majorities, prohibited the exportation of Peruvian bark into any territory occupied by France, and that this prohibition was moved by no less a person than the Chancellor of the Exchequer, Mr. Perceval, who commended it on the ground that "the severest pressure was already felt on the Continent from the want of that article," and that "it was of great importance to the armies of the enemy."[1] Such, in an age neither "ignorant" nor "barbarous," is authentic British precedent, but now ostentatiously forgotten.

(6.) The same recklessness, of such evil omen, breaks forth again in a despatch of the Foreign Secretary, where he undertakes to communicate the judgment of the British Cabinet on the President's Proclamation of Emancipation. Here, at least, you will say there can be no misunderstanding and no criticism; but you are mistaken. Under any ordinary circumstances, when great passions find no vent, such an act, having such an object, and being of such unparalleled importance, would be treated by the minister of a foreign power with supreme caution, if not with sympathy; but, under the terrible influence of the hour, Earl Russell, not content with condemning the Proclamation, misrepresents it in the most barefaced manner. This was done in a communication to Lord Lyons here in Washington. Gathering his condemnation into one phrase, he says that it "makes Slavery at once legal and illegal"[2]; whereas it

[1] Hansard's Parliamentary Debates, Vol. X. col. 695.

[2] Letter of January 17, 1863: Correspondence relating to the Civil War in the United States, pp. 51, 52: Parliamentary Papers, 1863, Vol. LXXII.

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is obvious to the most careless observer, who looks only at the face of the Proclamation, that, whatever its faults, it is not obnoxious to this criticism, for it makes Slavery legal nowhere, while it makes it illegal in an immense territory. An official letter so incomprehensible in motive, from a statesman usually liberal, if not cautious, is another illustration of that irritating tendency which will be checked, at last, when it is fully comprehended.

(7.) The activity of our navy is only another occasion for criticism in a similar spirit. Nothing can be done anywhere to please our self-constituted monitor. Our naval officers in the West Indies, acting under instructions modelled on the judgments of the British Admiralty, are reprehended by Earl Russell in a formal despatch.[1] The judges in our Prize Court are indecently belittled by this same minister, from his place in Parliament,[2] when it is notorious that there are several who compare favorably with any British Admiralty judge since Lord Stowell, not even excepting that noble and upright magistrate, Dr. Lushington. And this same minister has undertaken to throw the British shield over a newly invented contraband trade with the Rebel Slavemongers *vid* Matamoras, claiming that it is "a lawful branch of commerce" and "a perfectly legitimate trade." The "Dolphin" and "Peterhoff" were two ships elaborately prepared in London for this illicit commerce, and they have been duly condemned as such; but their seizure was made the occasion of official protest and complaint, with the insinuation of "vexatious capture and arbitrary interference," followed by the menace,

[1] Earl Russell to Mr. Stuart, October 10, 1862: Correspondence respecting Instructions given to Naval Officers of the United States in regard to Neutral Vessels and Mails, p. 5: Parliamentary Papers, 1863, Vol. LXXII.

[2] See, *post*, Appendix, p. 490.

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that, under such circumstances, "it is obvious that Great Britain must interfere to protect her flag."[1]

(8.) This persistent, inexorable criticism, even at the expense of all consistency, or of all memory, has broken forth in forms incompatible with that very "neutrality" so early declared. It was bad enough to declare neutrality, when the question was between a friendly power and an insulting barbarism; but it is worse, after the declaration, to depart from it, *if in words only.* The Court of Rome, at a period when it dictated the usage of nations, instructed its Cardinal Legate, on an important occasion, as a solemn duty, first and above all things, to cultivate "indifference" between the parties, and in this regard he was to be so exact, that not only should no partiality be seen in his conduct, but it should not be remarked even "*in the actions and words of his domestics.*"[2] If, in that early day, before steam and telegraph, or even the newspaper, neutrality was disturbed by "words," how much more so now, when every word is multiplied indefinitely, and wafted we know not whither, to begin, wherever it falls, a subtle, wide-spread, and irrepressible influence! This injunction is in plain harmony with the refined rule of Count Bernstorff, who, in his admirable despatch at the time of the Armed Neutrality, says sententiously: "Neutrality does not exist, *when it is not perfect.*"[3] It must be clear and above suspicion. Like the reputation of a woman, it is lost

[1] Earl Russell to Lord Lyons, April 24, 1863: Correspondence respecting Trade with Matamoras, p. 1: Parliamentary Papers, 1863, Vol. LXXII.

[2] Wicquefort, L'Ambassadeur et ses Fonctions, Liv. II. sec. 11.

[3] "La neutralité n'existe plus dès qu'elle n'est pas parfaite." — *Réponse du Comte de Bernstorff à M. Hailes, Envoyé Britannique à Copenhague, le 28 Juillet*, 1793: Cussy, Phases et Causes Célèbres du Droit Maritime des Nations, Tom. II. p. 177.

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when you begin to talk about it. Unhappily, there is too much occasion to talk about the "neutrality" of England.

I say nothing of a Parliamentary utterance, that the national cause was "detested by a large majority of the House of Commons"; nor do I speak of other most unneutral speeches. I confine myself to official declarations. Here the case is plain. Several of the British Cabinet, including the Foreign Secretary and the Chancellor of the Exchequer, two masters of "words," have allowed themselves in public speech to characterize our present effort to put down Rebel Slavery as "a contest for empire on one side and for independence on the other." Here are "words" which, under a specious form, openly encouraged Rebel Slavery. But they are more specious than true, revealing nothing but the side espoused by the orators. Clearly, on our side it is a contest for national life, involving the liberty of a race. Clearly, on the other side it is a contest for Slavery, in order to secure for this hateful crime *new* recognition and power; and it began in rebellion against the solemn judgment of the American people, declaring, in the election of Abraham Lincoln, that Slavery shall not be extended. Our empire is simply to crush Rebel Slavery. Their independence is but the unrestrained power to whip and sell women and children. If at the beginning the National Government made no declaration, yet the real character of the war was none the less apparent in the Presidential election, out of which it grew, and in the repeated declarations of the other side, who did not hesitate to assert their purpose to build a *new* power on Slavery,—as in the Italian campaign of Louis Napoleon against Austria the object was neces-

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sarily apparent, even before the Emperor tardily at Milan put forth his life-giving proclamation that Italy should be free from the Alps to the Adriatic, by which the war became, in its avowed purpose, as well as in reality, a war of liberation. That such a rebellion should be elevated by the unneutral "words" of a foreign Cabinet into respectability which it deserves so little is only another sign we have to watch.

(9.) These same Cabinet orators, not content with giving us a bad name, allow themselves to pronounce against us on the whole case. They declare that the National Government cannot succeed in crushing Rebel Slavery, and that dismemberment is inevitable. "Jefferson Davis," says one of them, "has created *a nation*." Thus do these representatives of declared "neutrality" degrade us and exalt Slavery. It is apparent that their utterance, though made in Parliament and repeated at public meetings, was founded less on special information from the seat of war — disclosing its secret — than on political theory, if not prejudice. It is true that our eloquent teacher, Edmund Burke, in his famous Letter to the Sheriffs of Bristol, argued most persuasively that Great Britain could not succeed in reclaiming the colonies which had declared themselves independent. His reasoning rather than his wisdom enters into and possesses the British statesmen of our day, who do not take the trouble to see how the two cases are so entirely unlike that the example of the one is not applicable to the other, — that the colonies were battling to found a *new* power on the corner-stone of Liberty, Equality, and Happiness to All Men, while our Slavemongers are battling to found a *new* power on the corner-stone of Slavery. The difference becomes a contrast, so that whatever was

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once generously said in favor of American Independence now tells with unmistakable force against this new-fangled pretension.

No British statesman saw the past more clearly than Earl Russell, when, long ago, in striking phrase, he said that England, in her war against our fathers, "had engaged *for the suppression of Liberty*";[1] but this is precisely what Rebel Slavery is doing. Men change, but principles are the same now as then. Therefore do I say, that every sympathy formerly bestowed upon our fathers now belongs to us their children, striving to uphold their work against bad men, who would not only break it in pieces, but put in its stead a *new* piratical power, whose declared object is "the suppression of Liberty." And yet British ministers, mounting the prophetic tripod, presume most oracularly to foretell the doom of this Republic. Their prophecies do not disturb my confidence. I do not forget how often false prophets have appeared, like the author of the "Oceana," who published a demonstration that monarchy was impossible in England[2] less than six months before Charles the Second was welcomed to London amid salvos of cannon and hurrahs of the people. Nor do I stop to consider how far such prophecies uttered in public places by British ministers are consistent with that British "neutrality" so constantly boasted. Opinions are allies more potent than subsidies, especially in an age like the present. Prophecies are opinions pro-

[1] Speech on the Repeal of the Foreign Enlistment Bill, April 16, 1823: Hansard's Parliamentary Debates, 2d Ser., Vol. VIII. col. 1036.

[2] The Ways and Means whereby an Equal and Lasting Commonwealth may be suddenly introduced and perfectly founded, with the free Consent and actual Confirmation of the Whole People of England. Feb. 6, 1659. First printed at London 1660. Harrington, Oceana and other Works, (London, 1747,) pp. 539, 540, xlv.

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claimed and projected into the future; and yet these are given freely to Rebel Slavery. There is matter for reflection in this instance, but I adduce it only as another illustration of the times. Nothing is more clear than that whosoever assumes to play prophet becomes pledged in character and pretension to sustain his prophecy. The learned Jerome Cardan, professor and doctor, also dabbler in astrology, of great fame in the sixteenth century, undertook to predict the day of his death, and he maintained his prophetic character by taking his own life at the appointed time. If British ministers, playing prophet, escape the ordinary influences of this craft, it is from that happy nature which suspends for them human infirmity and human prejudice. But it becomes us to note well the increased difficulties and dangers to which, on this account, the national cause is exposed.

(10.) It is not in "words" only, of speeches, despatches, or declarations, that our danger lies. I am sorry to add, that there are acts, also, with which the British Government is too closely associated. I do not refer to the unlimited supply of "munitions of war," so that our army everywhere, whether at Vicksburg or Charleston, is compelled to encounter Armstrong guns and Blakely guns, with all proper ammunition, from England; for the right of British subjects to sell these articles to Rebel Slavemongers was fixed, when the latter, by sudden metamorphosis, were changed from lawless vagrants of the ocean to lawful belligerents. Nor do I refer to the swarms of swift steamers, "a pitchy cloud warping on the eastern wind," always under British flag, with contributions to Rebel Slavery; for these, too, enjoy kindred immunity. Of course no

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royal proclamation can change wrong into right, or make such business otherwise than immoral; but the proclamation may take from it the character of felony.

Even the royal manifesto gives no sanction to the fitting out in England of a *naval expedition* against the commerce of the United States. It leaves the Parliamentary statute, as well as the general Law of Nations, in full efficacy to restrain and punish such offence. And yet, in face of this obvious prohibition, standing forth in the text of the law, and founded in reason "ere human statute purged the gentle weal," also exemplified by the National Government, which, from the time of Washington, has always guarded its ports against such outrage, powerful ships are launched, equipped, fitted out, and manned in England, with arms supplied at sea from another English vessel, and then, assuming that by this insulting *hocus pocus* all English liability is avoided, they proceed at once to rob and destroy the commerce of the United States. *England is the naval base* from which are derived the original forces and supplies enabling them to sail the sea. Several such ships are now depredating on the ocean, like Captain Kidd, under pretended commissions, each in itself a *naval expedition.* As England is not at war with the United States, these ships can be nothing else than pirates; and their conduct is that of pirates. Unable to provide a court for the trial of prizes, they revive for every captured ship the barbarous Ordeal of Fire. Like pirates, they burn what they cannot rob. Raging from sea to sea, they turn the ocean into a furnace and melting-pot of American commerce. Of these incendiaries, the most famous is the "Alabama," with a picked crew of British seamen, with "trained gunners

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out of her Majesty's naval reserve," all, like those of Queen Elizabeth, described as "good sailors and better pirates," and with everything else from keel to truck British, which, after more than a year of unlawful havoc, is still firing the property of our citizens, *without once entering a Rebel Slavemonger port*, but always keeping the umbilical connection with England, out of whose womb she sprung, and never losing the original nationality stamped upon her by origin, so that, at this day, she is a British pirate ship, precisely as a native-born Englishman, robbing on the high seas, and never naturalized abroad, is a British pirate subject.

It is bad enough that all this should proceed from England. It is hard to bear. Why is it not stopped at once? One cruiser might, perhaps, elude a watchful government. But it is difficult to see how this can occur once, twice, three times, — and the cry is, Still they sail! Two powerful rams are announced, like stars at a theatre. Will they, also, be allowed to perform? I wish there were not too much reason to believe that all these performances are sustained by prevailing British sympathy. A Frenchman, accidentally prisoner on the Alabama at the destruction of two American ships, describes a British packet in sight whose crowded passengers made the sea resound with cheers, as they witnessed the captured ships handed over to the flames. The words of Lucretius were verified: —

"Suave etiam belli certamina magna tueri." [1]

And these same cheers were echoed in Parliament, as the builder of the piratical craft gloried in his deed. The verse which filled the ancient theatre with glad

[1] De Rerum Natura, Lib. II. 6.

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applause declared sympathy with Humanity [1]; but English applause is now given to Slavery and its defenders: "I am an Englishman, and nothing of Slavery is foreign to me." Accordingly, Slavery is helped by English arms, English gold, English ships, English speeches, English cheers. And yet, for the honor of England be it known, there are Englishmen who stand firm and unshaken amidst this painful recreancy. Their names cannot be forgotten. And still more for the honor of England be it, spoken, the working classes, called to suffer the most, bravely bear their calamity, without joining the enemies of the Republic. Their cheers are for Freedom, and not for Slavery.

But the cheers of the House of Commons prevail in her Majesty's Government. Municipal Law is violated, while International Law, in its most solemn obligation to do unto others as we would have them do unto us, is treated as the merest nullity. Eminent British functionaries, in Court and Parliament, vindicate the *naval expeditions* which in the name of Slavery are unleashed against a friendly power. Taking advantage of an admitted principle, that, after the concession of belligerent rights, "munitions of war" may be supplied, the Lord Chief Baron of the Exchequer tells us that "ships of war" may be supplied also. Lord Palmerston echoes Lord Chief Baron. Each vouches American authority. But they are mistaken. The steel which they strive to "impel" cannot be feathered from our sides. Since the earliest stage of its existence, the National Government has asserted a distinction between the two cases; and so has the Supreme Court, although there

[1] "Homo sum: humani nihil a me alienum puto."
TERENCE, *Heaut.*, Act. I. Sc. i. 25.

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are words of Story latterly quoted to the contrary. The authority of the Supreme Court is positive on the two points into which the British apology is divided. The first is, that, even if a "ship of war" cannot be furnished, the offence is incomplete until the armament is put aboard, so that, where the ship, though fitted out and equipped in a British port, awaits an armament at sea, she is not liable to arrest. Such apology is an insult to the understanding and to common sense, — as if it were not obvious that the offence begins with the laying of the keel for the hostile ship, *knowing it to be such*:[1] and in this spirit the Supreme Court has decided that it is not necessary to find that a ship on leaving port was armed, or in a condition to commit hostilities; for citizens are restrained from such acts as are calculated to involve the country in war.[2] The second apology assumes, that, even if the armament were aboard, so that the "ship of war" is complete at all points, still the expedition would be lawful, if the fiction of a sale were adroitly managed. On this point, the Supreme Court, speaking by Chief-Justice Marshall, has left no doubt of its deliberate and most authoritative judg-

[1] The recent British Foreign Enlistment Act, passed August 9, 1870, entitled "An Act to regulate the conduct of her Majesty's subjects during the existence of hostilities between foreign states with which her Majesty is at peace," makes it illegal, if any person within her Majesty's dominions "builds, or agrees to build, or causes to be built, any ship, *with intent, or knowledge, or having reasonable cause to believe* that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state." (Papers relating to the Foreign Relations of the United States, transmitted to Congress December 5, 1870, p. 159.) Lord Westbury, an ex-Chancellor, said in the House of Lords, March 27, 1868, "It was not a question whether armed ships had actually left our shores, but it was a question whether ships *with a view to war* had been built in our ports by one of two belligerents."— Hansard's Parliamentary Debates, 3d Ser., Vol. CXCI. col. 346.

[2] United States *v.* Quincy, 6 Peters, S. C. R., 465, 466.

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ment. In the case before the Court the armament was aboard, but cleared as cargo; the men, too, were aboard, but enlisted for a commercial voyage; the ship, though fitted out to cruise against a nation with which we were at peace, was not commissioned as a privateer, and did not attempt to act as such, until she reached the river La Plata, *where a commission was obtained and the crew reënlisted;* yet, in the face of these extenuating circumstances, it was declared by the whole Court, that the neutrality of the United States had been violated, so that the guilty ship could not afterwards be recognized as a legitimate cruiser. All the disguises were to no purpose. The Court penetrated them every one, saying, that, if such a ship could lawfully sail, there would be on our part "a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe."[1] But a "neutrality" worse even than that condemned in advance by our Supreme Court, "of which no nation would be the dupe," is now served out to us, which nothing can explain, short of the fatal war-spirit that has entered into Great Britain. There was a time when the Foreign Secretary of England, truly eminent as statesman and orator, Mr. Canning, said in the House of Commons: "If a war must come, let it come in the shape of satisfaction to be demanded for injuries, of rights to be asserted, of interests to be protected, of treaties to be fulfilled. *But, in God's name, let it not come on in the paltry, pettifogging way of fitting out ships in our harbors to cruise for gain. At all events, let the country disdain to be sneaked into a war.*"[2] These noble

[1] The Gran Para, 7 Wheaton, R., 471; also four other cases in same volume.

[2] Speech on Repeal of the Foreign Enlistment Bill, April 16, 1823: Speeches, Vol. V. p. 51.

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words were uttered in reply to Lord John Russell and his associates in 1823, when trying to repeal the Foreign Enlistment Act, and to overturn the statute safeguards of British neutrality. They speak now with greater force even than then.

Though it be admitted that "ships of war," like "munitions of war," may be sold to a belligerent, as is asserted by the British Prime-Minister, echoing the Lord Chief Baron, it is obvious that it can be only with the distinction already mentioned, that the sale is a *commercial transaction*, pure and simple, and not in any respect a *hostile expedition* fitted out in England. The ship must be "exported" as an *article of commerce*, and must continue such *until* arrival at the belligerent port, where alone can it be fitted out and commissioned as a "ship of war," when its hostile character will commence. Any attempt in England to impart a hostile character to the ship, or, in one word, to make England its *naval base*, must be criminal: but this is precisely what has been done. Ships are sent forth, armed and equipped. And, pray, how distinguish a ship armed and equipped from a regiment armed and equipped? It is not a munition, it is not even an article, but much more; and here is the distinction not to be overlooked. It is an *organized force*, and the nation sending it forth makes itself a party to the war, — all of which England has done. And here are the leonine footprints which point so badly.

(11.) Not content with misconstruing the decisions of our Supreme Court, making them a cover for *naval expeditions* to depredate on our commerce, our whole history is forgotten or misrepresented. It is forgotten, that, as early as 1793, under the administration of Wash-

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ington, before any Act of Congress on the subject, the National Government recognized its liability, under the Law of Nations, for ships fitted out in its ports to depredate on British commerce; that Washington, in his speech at the opening of Congress, describes such ships as "vessels commissioned or *equipped in a warlike form* within the limits of the United States," and also as "military expeditions or enterprises";[1] and that Jefferson, vindicating this policy of *repression*, said, in a letter to the French Minister, that it was "our wish to preserve the morals of our citizens from being vitiated by courses of lawless plunder and murder";[2] that, on this occasion, the National Government made the distinction between "munitions of war," which a neutral might supply in the way of commerce to a belligerent, and "ships of war," which a neutral was not allowed to supply or even to augment with arms; that Mr. Hammond, the British plenipotentiary at that time, by his letter of 8th May, 1793, after complaining of two French privateers, fitted out at Charleston to cruise against British commerce, expressly declares that "he conceives them to be breaches of that neutrality which the United States profess to observe, and direct contraventions of the proclamation which the President issued,"[3] and that very soon there were criminal proceedings, at British instigation, on account of these privateers, in which it was affirmed by the Court that such ships could not be fitted out in a neutral port without violation of international obligations; that promptly, on the representation of the British Government, a statute

[1] American State Papers, Foreign Relations, Vol. I. p. 22.
[2] Mr. Jefferson to M. Ternant, May 15, 1793: Ibid., p. 148.
[3] Wharton's State Trials, p. 50.

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was enacted by Congress, in harmony with the Law of Nations, for the better maintenance of our neutrality;[1] that, in 1818, another statute followed in the nature of a Foreign Enlistment Act,[2] afterwards proposed as an example by Lord Castlereagh, when urging a similar statute upon Parliament;[3] that, in 1823, the conduct of the United States on this whole head was presented as a model by Mr. Canning;[4] that, in 1838, during the rebellion in Canada, on the appeal of the British Government, and to its special satisfaction, as was announced in Parliament by Lord Palmerston, at the time Foreign Secretary, our Government promptly declared its purpose "to maintain the supremacy of those laws which were passed to fulfil the obligations of the United States to all friendly nations who may be unfortunately engaged in foreign or domestic war," and, not satisfied with existing powers, undertook to ask additional legislation from Congress; that Congress proceeded at once to the enactment of another statute, calculated to meet the immediate exigency, where it is provided that collectors, marshals, and other officers shall "seize and detain *any vessel* or any arms or munitions of war which may be provided or prepared for *any military expedition* or enterprise against the territory or dominions of any foreign prince or state."[5] It is something to forget these

[1] Acts 3d Cong. Ch. 37, June 5, 1794: Statutes at Large, Vol. I. p. 381.

[2] Acts 15th Cong. 1st Sess. Ch. 88, April 20, 1818: Statutes at Large, Vol. III. p. 447.

[3] Hansard's Parliamentary Debates, Vol. XL. col. 869, 907, May 13, June 3, 1819.

[4] Ibid., 2d Ser. Vol. VIII. col. 1056, April 16, 1823.

[5] Mr. Forsyth to Mr. Fox, January 5, 1838: Executive Documents, 25th Cong. 2d Sess., H. of R., No. 74, p. 28. President's Message, January 5, 1838: Ibid., No. 64. Hansard's Parliamentary Debates, 3d Ser., Vol. XL. col. 716, February 2, 1838. Acts 25th Cong. 2d Sess. Ch. 31, March 10, 1838: United States Statutes at Large, Vol. V. p. 212.

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things; but it is convenient to forget still further, that, at the Crimean War, in 1854, the British Government, jointly with France, made another appeal to the United States, that our citizens should "rigorously abstain from taking part in armaments of Russian privateers, or in any other measure opposed to the duties of a strict neutrality";[1] and this appeal, declared by the British Government to be "in the spirit of just reciprocity," was answered on our part by a sincere and determined vigilance, so that not a single British or French ship suffered from any cruiser fitted out in our ports. And it is also convenient to forget no less the solemn obligations of treaty, binding both parties:—

"That the subjects and citizens of the two nations *shall not do any acts of hostility or violence against each other*, nor accept commissions or instructions so to act from any foreign prince or state, enemies to the other party; nor shall the enemies of one of the parties be permitted to invite or endeavor to enlist in their military service any of the subjects or citizens of the other party; *and the laws against all such offences and aggressions shall be punctually executed.*"[2]

At the date of this treaty, in 1794, there was little legislation on the subject in either country; so that the treaty, in harmony with the practice, testifies to the requirements of the Law of Nations as understood at the time by both powers.

And yet, disregarding all these things, which show how faithfully the National Government has acted, both in measures of *repression* and measures of *compensation*,

[1] Mr. Crampton to Mr. Marcy, April 21, 1854; Count de Sartiges to Mr. Marcy, April 28, 1854: Executive Documents, 33d Cong. 1st Sess., H. of R., No. 103, pp. 2, 4.

[2] Treaty of 1794, Art. 21: United States Statutes at Large, Vol. VIII. p. 127.

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also how often the British Government asked and received protection at our hands, and how highly our example of neutrality has been appreciated by leading British statesmen, — and disowning, also, that "spirit of just reciprocity," which, besides being the prompting of an honest nature, has been positively promised, ship after ship is permitted to leave British ports to depredate on our commerce; and when we complain of an outrage so unprecedented and so unjustifiable, all the obligations of International Law are ignored, and we are petulantly told that the evidence against the ships is not sufficient *under the statute;* and when we propose that the statute shall be rendered efficient for the purpose, — precisely as in past times the British Government, under circumstances less stringent, proposed to us, — we are pointedly repelled by the old baronial declaration, that there must be no change in the laws of England, — "*nolumus leges Angliæ mutari*"; while, to cap this strange insensibility, Lord Palmerston, in a last debate of the late Parliament, brings against us a groundless charge of infidelity to neutral duties during the Crimean War,[1] when the fact is notoriously the reverse, and Earl Russell, in the same spirit, imagines an equally groundless charge, which he records in one of his diplomatic notes, that we have recently enlisted men in Ireland,[2] when notoriously we have done no such thing. Thus are the obligations of reciprocal service and goodwill openly discarded, while our public conduct, as well in the past as the present, is openly misrepresented.

[1] Speech on the Consolidated Fund Bill, July 23 1863: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXXII. col. 1270.

[2] Earl Russell to Mr. Adams, April 16, 1863: Correspondence respecting Enlistment of British Subjects in the Federal Army, p. 2: Parliamentary Papers, 1863, Vol. LXXII.

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(12.) This flagrant oblivion of history and of duty, which seems the adopted policy of the British Government, is characteristically followed by flat refusal to pay for the damages to our commerce caused by the hostile expeditions. The United States, with Washington as President, on application of the British Government, made compensation for damages to British commerce under circumstances much less vexatious, — and, still further, by special treaty, made compensation for damages "by vessels originally armed" in our ports,[1] — which is the present case. Of course it can make no difference, not a pin's difference, if the armament is carried out to sea in another vessel from a British port and there transshipped. Such an elaborate evasion may be effectual against a Parliamentary statute, but it must be impotent against a demand upon the British Government, according to the principles of International Law; for this law looks always at *substance*, and not *form*, and will not be diverted by the trick of a pettifogger. Whether the armament be put on board in port or at sea, England is always the *naval base*, or, according to the language of Sir William Scott in a memorable case, the "station" or "vantage-ground," which he declared a neutral country could not be.[2] Therefore the early precedent between the United States and England is in every respect completely applicable; and since this precedent was established *not only by the consent of England, but at her motion*, it must be accepted on the present occasion as an irreversible declaration of international duty. Other nations might differ, but England is bound. And now it is her original interpretation,

[1] Treaty of 1794, Art. 7.

[2] Twee Gebroeders, 3 Robinson, R., 165.

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first made to take compensation from us, which is flatly rejected when we ask compensation from her. Even if the responsibility for *a hostile expedition* fitted out in British ports were not plain, there is something in the recent conduct of the British Government calculated to remove all doubt. Pirate ships are reported on the stocks ready to be launched, and when the Parliamentary statute is declared insufficient to stop them, the British Government declines to amend it, and, so doing, openly declines to stop the pirate ships, saying, "If the Parliamentary statute is inadequate, then let them sail." It is not needful to consider the apology. The act of declension is positive, and its consequences are no less positive, *fixing beyond question the responsibility of the British Government for these criminal expeditions.* Thus fixing the responsibility, we but follow the suggestions of reason and the text of an approved authority, whose words have been adopted in England.

"*It must be laid down as a maxim*, that a sovereign, who, knowing the crimes of his subjects, as, for example, that they *practice piracy* on strangers, and, being also able and obliged to hinder it, does not hinder it, *renders himself criminal, because he has consented to the bad action, the commission of which he has permitted.* . . . . It is presumed that a sovereign knows what his subjects openly and frequently commit; and *as to his power of hindering the evil, this likewise is always presumed*, unless the want of it be clearly proved."[1]

Such are the words of Burlamaqui, in his work on Political Law, quoted with approbation by Phillimore, in his work on the Law of Nations.[2] Unless these

[1] Burlamaqui, Principles of Natural and Politic Law, tr. Nugent (London, 1763): Politic Law, Part IV. ch. 3, §§ 21, 22, pp. 255, 256.

[2] Commentaries upon International Law (London, 1854), Vol. I. p. 231.

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words are discarded as "a maxim," while the early precedent of British demand upon us is also rudely rejected, it is difficult to see how the British Government can avoid the consequences of complicity with the pirate ships in all their lawless devastation. I forbear to dwell on this accumulating liability, amounting already to many millions of dollars, with accumulating exasperations also. My present object is accomplished, if I make you see which way danger lies.

(13.) Beyond acts and words, this same British *rabbia* shows itself in the official tone towards the national cause in its unparalleled struggle, especially throughout the correspondence of the British Foreign Office. There is little friendship in any of these letters. Nor is there any sympathy with the national championship against Rebel Slavery, nor even one word of mildest dissent from the miscreant apocalypse preached in its behalf. Naturally the tone is in harmony with the sentiment. Hard, curt, captious, cynical, it evinces indifference to that kindly intercourse which nations ought to cultivate with each other, and which should be the study of a wise statesmanship. The Malay *runs amuck*, and such is the British diplomatic style in dealing with us. This is painfully conspicuous in all that concerns the pirate ships. But I can well understand that a Secretary conceding belligerent rights to Rebel Slavery so easily, and then so easily permitting its ships to sally forth for piracy, would be very indifferent to the tone of what he wrote. And yet, even outrage may be soothed or softened by gentle words; but none such come out of British diplomacy to us. Most deeply do I regret this too suggestive failure. And believe me, fellow-citizens, I say these things with sorrow unspeakable, and only in

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discharge of my duty, when, face to face, I meet you to consider the aspects of our affairs abroad.

(14.) There is still another head of danger, in which all others culminate. I refer to intrusive mediation, or, it may be, recognition of the Slavemonger attempt as an independent nation, — for such movements have been made openly in Parliament and urged constantly by the British press, and, though not yet adopted by her Majesty's Government, have never been repelled on principle, so that they constitute a perpetual cloud threatening to break. It is plain to all who have not forgotten history, that England never can be guilty of such recognition without unpardonable apostasy; nor can she intervene by way of mediation, except in the interests of Freedom. And yet such are the "elective affinities" newly born between England and Slavery, such is the wilful blindness with regard to our country, kindred to that which prevailed in the time of George Grenville and Lord North, that her Majesty's Government, instead of repelling the proposition, simply adjourn it, adopting meanwhile the attitude of one watching to strike. The British Minister at Washington, of model prudence, whose individual desire for peace I cannot doubt, tells his Government, in a despatch found in the last Blue Book, that as yet he sees no sign of "a conjuncture at which foreign powers *may step in with propriety* and effect to put a stop to the effusion of blood."[1] Here is the plain assumption that such conjuncture may occur. For the present we are left free to wage the battle against Slavery without any such intervention in arrest of the national efforts.

[1] Lord Lyons to Earl Russell, January 13, 1863: Correspondence relating to the Civil War in the United States, p. 53: Parliamentary Papers, 1863, Vol. LXXII.

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Such are some of the warnings which lower from the English sky arching the graves of Wilberforce and Clarkson, while sounding above these sacred resting-places are heard strange, un-English voices, crying out: "Come unto us, Rebel Slavemongers, whippers of women and sellers of children! — for you are the people of our choice, whom we welcome promptly to *ocean rights*, with Armstrong guns and *naval expeditions* equipped in our ports, and on whom we lavish sympathy always and the prophecy of success; while for you who uphold the Republic and oppose Slavery we have hard words, criticism, rebuke, and the menace of war!"

Crossing the Channel into France, we are not encouraged much. And yet the Emperor, though acting habitually in concert with the British Cabinet, has not intermeddled so illogically or displayed a temper of so little international amiability. The correspondence under his direction, even at the most critical moments, leaves little to be desired in respect of form. Nor has there been a single blockade-runner under the French flag, nor a single pirate ship from a French port. But, in spite of these things, it is too apparent that the Emperor has taken sides against us in at least four important public acts, positively, plainly, offensively. The Duc de Choiseul, Prime-Minister of France, was addressed by Frederick of Prussia as "Coachman of Europe," — a title which belongs now to Louis Napoleon. But he must not try to be "coachman of America."

(1.) Following the example of England, Louis Napoleon acknowledges the Rebel Slavemongers as *ocean* belligerents, so that, with the sanction of France, our ancient ally, their pirate ships, although without a single

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open port which they can call their own, enjoy complete immunity as lawful cruisers, while all who sympathize with them furnish supplies and munitions of war. This fatal concession was aggravated by the concurrence of the two great powers. But, God be praised, their joint act, though capable of giving brief vitality to Slavery on pirate decks, is impotent to confirm the intolerable pretension.

(2.) Sinister events are not alone, and this recognition of Slavery was followed by an expedition of France, in concurrence with England and Spain, against our neighbor Republic, Mexico. The two latter powers very soon withdrew, but the Emperor, less wise, did not hesitate at invasion. A French fleet, with an unmatched iron-clad, — the consummate product of French naval art, — is now at Vera Cruz, and the French army, after a protracted siege, has stormed Puebla and entered the famous capital. This far-reaching enterprise was originally declared to be nothing more than process, served by a general, for the recovery of outstanding debts due to French citizens. But the Emperor, in a mystic letter to General Forey, gives it another character. He proposes nothing less than the restoration of the Latin race on this side of the Atlantic, and more than intimates that the United States must be restrained in power and influence over the Gulf of Mexico and the Antilles. And now the Archduke Maximilian of Austria is proclaimed Emperor of Mexico under the protection of France. It is obvious that this imperial invasion, though only indirectly against us, would not have been made, if our convulsions had not left the door of the Continent ajar, so that foreign powers may bravely enter in. And it is more obvious that this at-

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tempt to plant a throne by our side would "have died before it saw the light," had it not been supposed that Rebel Slavery was about to triumph.[1] Plainly the whole transaction is connected with our affairs. But it can be little more than a transient experiment; for who can doubt that this imperial exotic, planted by foreign care and propped by foreign bayonets, must disappear before the ascending glory of the Republic?

(3.) This enterprise of war was followed by an enterprise of diplomacy not less hardy. The Emperor, not content with stirring against us the Gulf of Mexico, the Antilles, and the Latin race, entered upon work of a different character. He invited England and Russia to unite with France in tendering to the two "belligerents" (such is the equal designation of our Republic and the embryo Slavemonger mockery!) a joint mediation to procure "an armistice for six months, during which every act of war, direct or indirect, should provisionally cease on sea as well as on land, to be renewed, if necessary, for a further period." The Cabinets of England and Russia, better inspired, declined the invitation, which looked to little short of recognition itself. Under the proposed armistice, all our vast operations must have

[1] M. Prévost-Paradol, the eminent writer, and afterwards Minister of France at Washington, justifies this statement. "If the civil war," says he, "had not broken out, or if the French Government had foreseen the final victory of the North and the reconstruction of the American power, never would the idea of founding a throne in Mexico by European arms have entered into its head. . . . . The fall of the American Republic was, from the beginning of this great trouble, among the aspirations of the French Government, and its most accredited organs made no mystery of it." Attributing to England the same desire and the same judgment on the probable issue of the war, the distinguished writer says the English Government simply waited events, "in a malevolent neutrality towards the North." — KERATRY, *L'Elévation et la Chute de l'Empereur Maximilien:* Préface de Prévost-Paradol.

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been suspended, the blockade itself must have ceased, while the Rebel ports were opened on the one side to unlimited supplies and military stores, and on the other to unlimited exports of cotton. Trade, for the time, would have been legalized in these ports, and Slavery would have lifted its grinning front before the civilized world. Not disheartened by this failure, the Emperor alone pushed forward his diplomatic enterprise against us, as alone he had pushed forward his military enterprise against Mexico, and presented to our Government the unsupported mediation of France. His offer was promptly rejected by the President. By solemn resolutions of both Houses, adopted with singular unanimity, and communicated since to all foreign governments, Congress announced that such a proposition could be attributed only to "a misunderstanding of the true state of the question, and of the real character of the war in which the Republic is engaged"; and that it was in its nature so far injurious to the national interests that Congress would be obliged to consider its repetition an unfriendly act.[1] This strong language frankly states the true position of our country. Any such offer, whatever its motive, must be an encouragement to the Rebellion. In an age when ideas prevail and even words become things, the simple declarations of statesmen are of incalculable importance. But the head of a great nation is more than statesman in such influence. The imperial proposition tended directly to the dismemberment of the Republic and the substitution of a ghastly Slavemonger nation.

Baffled in this effort twice attempted, the Emperor does not yet abandon his policy. We are told that it

[1] See, *ante*, p. 309.

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is "postponed to a more suitable opportunity"; so that he, too, waits to strike, if the Gallic cock does not sound alarm in an opposite quarter. Meanwhile the development of the Mexican expedition shows too clearly the motive of mediation. It was all one transaction. Mexico was invaded for empire, and mediation was proposed to help the plot. But the invasion must fail with the diplomacy to which it is allied.

(4.) The policy of the French Emperor towards our Republic is not left to uncertain inference. For a long time public report has pronounced him unfriendly, and now public report is confirmed by what he does and says. The ambassadorial attorney of Rebel Slavery is received at the Tuileries, members of Parliament on an errand of hostility to our cause are received at Fontainebleau, and the open declaration is made that the Emperor desires to recognize Rebel Slavery as an independent power. This is hard to believe, but it is too true. The French Emperor is against us. In an evil hour, under temptations which should be scouted, he forgets the precious traditions of France, whose blood commingled with ours in a common cause; he forgets the swords of Lafayette and Rochambeau, flashing side by side with the swords of Washington and the earlier Lincoln, while the lilies of the ancient monarchy floated together with the stars of our infant flag; he forgets that early alliance, sealed by Franklin, which gave to the Republic the assurance of national life, and made France the partner of her rising glory; — "*Heu pietas! heu prisca fides! Manibus date lilia plenis!*" — and he forgets still more the obligations of his own name, — how the first Napoleon surrendered to us Louisiana and the whole region west of the Mississippi, saying: "This

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accession of territory establishes forever the power of the United States, and gives to England a maritime rival destined to humble her pride";[1] and he forgets, also, how he himself, when beginning intervention for Italian liberty, boasted proudly that France always stood for an "idea"; and forgetting these things, which mankind cannot forget, he seeks the disjunction of this Republic, with the spoliation of that very territory which came to us with such auspices, while France, always standing for an "idea," stands, under the second Napoleon, for the "idea" of welcome to a new evangel of Slavery, with Mason and Slidell as the evangelists. Thus is imperial influence exerted for Rebel Slavemongers. The Emperor, for the present, forbears to fling his sword into the scale; but he flings his heavy hand, if not his sword.

Only recently we have the menace of the sword. The throne of Mexico is offered to an Austrian archduke. The desire to recognize the independence of Rebel Slavery is openly declared. These two incidents together are complements of each other. And now we are assured by concurring report, that Mexico is to be maintained as an empire. The policy of the Holy Alliance, originally organized against the great Napoleon, is adopted by his representative on the throne of France. What its despot authors left undone the present Emperor, nephew of the first, proposes to accomplish. Report informs us that Texas also is doomed to the imperial protectorate, thus ravishing a possession which belongs to this Republic as much as Normandy belongs to France.[2] The partition of Poland is

[1] Barbé-Marbois, Histoire de la Louisiane, p. 335.

[2] From a despatch of Mr. Benjamin, the Rebel Secretary of State, it seems

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acknowledged to be the great crime of the last century. It was accomplished by three powers, with the silent connivance of the rest, but not without pangs of remorse in one of the spoilers. "I know," said Maria Theresa to the ambassador of Louis the Sixteenth, "that I have brought a deep stain on my reign by what has been done in Poland; but I am sure that I should be forgiven, if it could be known what repugnance I had to it."[1] Here on this Continent the French Emperor seeks to play the very part which of old caused the contrition of Maria Theresa; nor could the partition of our broad country — if, in an evil hour, it were accomplished — fail to be the great crime of the present century. Trampler upon the Republic in France, trampler upon the Republic in Mexico, it remains to be seen if the French Emperor can prevail as trampler upon this Republic. I do not think he can; nor am I anxious on account of this new-found Emperor, who will be another King Canute against the rising tide of the American people. His chair must be withdrawn, or he will be overwhelmed.[2]

Here I bring to an end this unpleasant review. It

that the French Emperor embraced Texas in his Mexican plot. (Lawrence, Commentaire sur les Éléments du Droit International, Tom. II. p. 360, Part. II. ch. 1.) In European diplomatic circles it was reported that he had tried to seduce a prince of Portugal by tender of the throne of Mexico with the promise of Texas.

[1] Flassan, Histoire de la Diplomatie Française, Tom. VII. p 125.

[2] The Mexican crown was voted to the Archduke Maximilian by the Assembly of Notables, 10th July, 1863, and formally tendered to him at Miramar, 3d October, twenty-three days after this speech, but he did not enter the City of Mexico till 12th June, 1864. The new Empire was acknowledged by all the European powers. The United States refused to acknowledge it. The suppression of our Rebellion was followed by the withdrawal of the French troops, and the execution of Maximilian, who was condemned to death and shot by the Mexicans, 19th June, 1867.

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is with little satisfaction, and only in explanation of our relations with foreign powers, that I accumulate these instances, not one of which, small or great, is without its painful lesson, while they all testify with a single voice to the perils of our country.

II.

ANOTHER branch of the subject is not less important. Considering all these things, and especially how great powers abroad constantly menace intervention, now by criticism and then by proffer of mediation, all tending painfully to something further, it becomes us to see what, according to International Law and the examples of history, will justify foreign intervention, in any of the forms it may take. And here there is one remark to be made at the outset. Nations are equal in the eye of International Law, so that what is right for one is right for all. It follows that no nation can justly exercise any right which it is not bound to concede under like circumstances. Therefore, should our cases be reversed, there is nothing England and France now propose, or may hereafter propose, which it will not be our equal right to propose, when Ireland or India once more rebels, or when France is in the throes of its next revolution. Generously, and for the sake of that international comity not lightly hazarded, we may reject the precedents they furnish; but it will be difficult for them to complain, if we follow their steps.

Foreign intervention is, on its face, inconsistent with every idea of national independence, which in itself is the natural and acknowledged right of a nation to rest

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undisturbed so long as it does not disturb others. If nations stood absolutely alone, dissociated from each other, so that what passed in one had little or no influence in another, only a tyrannical or intermeddling spirit could fail to recognize this right. But civilization, drawing nations nearer together and into one society, brings them under reciprocal influence, so that no nation can now act or suffer alone. Out of the relations and suggestions of good neighborhood, involving the admitted right of self-defence, springs the only justification or apology to be found for *foreign intervention*, which is the general term to signify interposition in the affairs of another country, whatever form it may take. Much is done under the name of "good offices," whether in the form of mediation or intercession, — and much also by military power, whether in the declared will of superior force or directly by arms. Recognition of independence is also another instance. Intervention in any form is interference. If peaceable, it must be judged by its motive and tendency; if forcible, it will naturally be resisted by force.

Intervention may be between two or more nations, or between the two parties to a civil war; and yet again, it may be where there is no war, foreign or domestic. In each case it is governed by the same principles, except, perhaps, that in the case of civil war there should be more careful consideration, not only of the rights, but of the susceptibilities of a nation so severely tried. Such is the obvious suggestion of humanity. Intervention between nations is only a common form of participation in foreign war, but intervention in a civil war is intermeddling in the domestic concerns of another nation. Whoever acts at the *joint invitation* of belligerent par-

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ties to compose a bloody strife is entitled to the blessings which belong to the peacemakers; but, if uninvited, or acting at the invitation of one party only, he will be careful to proceed with reserve and tenderness, in the spirit of peace, and confining action to a proffer of good offices in the form of mediation or intercession, unless he is ready for war. Such proffer may be declined without offence. But it can never be forgotten, that, *where one side is obviously fighting for Barbarism*, any intervention, whatever form it takes, — if only by captious criticism, calculated to encourage the wrong side, or to secure for it time or temporary toleration, if not final success, — *is plainly immoral.* If not contrary to the Law of Nations, it ought to be.

Intervention in the spirit of peace and for the sake of peace belongs to the refinements of modern civilization. Intervention in the spirit of war, if not for the sake of war, has filled a large space in history, ancient and modern. But all these instances may be grouped under two heads: first, intervention in *external* affairs; and, secondly, intervention in *internal* affairs. The first is illustrated by the intervention of the Elector Maurice of Saxony against Charles the Fifth, of King William against Louis the Fourteenth, of Russia and France in the Seven Years' War, of Russia again between France and Austria in 1805, and also between France and Prussia in 1806, and of France, Great Britain, and Sardinia between Turkey and Russia in the war of the Crimea.

The intervention of Russia, Austria, and Prussia in the affairs of Poland, of Great Britain among the native provinces of India, and of the Allied Powers in the French Revolution, under the continued inspiration of

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the Treaty of Pilnitz, are illustrations of the second head. Without dwelling on these great examples, I shall call attention to instances showing more especially the growth of intervention, first in external, and then in internal affairs. Here I shall conceal nothing. Instances seeming against the principles I have at heart will at least help illustrate the great subject, so that you may see it as it is.

(1.) First in order, and for the sake of completeness, I speak of intervention in *external* affairs, where two or more nations are parties.

As long ago as 1645, France offered mediation between what were then called "The Two Crowns of the North," Sweden and Denmark. This was followed, in 1648, by the famous Peace of Westphalia, the beginning of our present Law of Nations, negotiated under the joint mediation of the Pope and the Republic of Venice, present by nuncio and ambassador. In 1655, the Emperor of Germany offered mediation between Sweden and Poland; but the old historian records that the Swedes suspected him of seeking to increase rather than to arrange pending difficulties; and the effort ended by the withdrawal of the imperial envoy into the Polish camp. Sweden, though often belligerent in those days, was not so always, and, in 1672, when war broke forth between France and England on one side and the Dutch Provinces on the other, we find her proffering mediation, which was promptly accepted by England, who justly rejected a similar proffer most hardily made by the Elector of Brandenburg, ancestor of the kings of Prussia, while marching at the head of his forces to join the Dutch. The English note

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on this occasion, written in what at the time was called "sufficiently bad French, but in very intelligible terms," declared that the Electoral proffer, though under the pleasant name of mediation (*par le doux nom de médiation*), was adjudged to be only arbitration, and that, instead of mediation *unarmed and disinterested*, it was mediation armed and pledged to the enemies of England.[1]

Such are earlier instances, all of which have their lessons for us. There are modern, also. I allude only to the Triple Alliance, between Great Britain, Prussia, and Holland, which, at the close of the last century, successively intervened, by mediation which could not be resisted, to compel Denmark, while siding with Russia against Sweden, to remain neutral for the rest of the war, — then, in 1791, to dictate terms of peace between Austria and the Porte, — and lastly, in 1792, to constrain Russia into abandonment of her designs upon the Turkish Empire by the Peace of Jassy. On this occasion, the Russian Empress, Catharine the Second, peremptorily refused the mediation of Prussia, and the mediating Alliance made its approaches through Denmark, by whose good offices the Empress was finally induced to accept the treaty. While thus engaged in professed mediation, England, in a note to the French ambassador, declined to act as mediator between France and the Allied Powers, leaving that world-embracing war to proceed. Not only has England refused to act as mediator, but *also refused submission to mediation.* This was during the last war with the United States, when Russia, at that time the ally of England, proffered mediation between the two belligerents, which was promptly accepted by the United

[1] Wicquefort, L'Ambassadeur et ses Fonctions, Liv. II. sec. 11.

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States. Its rejection by England, causing the prolongation of hostilities, was considered by Sir James Mackintosh less justifiable, as "a mediator is a common friend, who counsels both parties with a weight proportioned to their belief in his integrity and their respect for his power; but he is not an arbitrator, to whose decision they submit their differences, and whose award is binding on them."[1] The Peace of Ghent was concluded at last under Russian mediation. But England has not always been belligerent. When Andrew Jackson menaced letters of marque against France, on account of failure to pay a sum stipulated in a recent treaty with the United States, King William the Fourth proffered mediation; but happily the whole question was already virtually arranged. It appears, also, that, before our war with Mexico, the good offices of England were tendered to the two parties; but neither was willing to accept them, and war took its course.

Such are instances of interference in external affairs; and since International Law is traced in history, they furnish a guide we cannot now neglect, especially when we regard the actual policy of England and France.

(2.) Instances of foreign intervention in the *internal* affairs of a nation are more pertinent. They are numerous, and not always harmonious, especially if we compare the new with the old. In the earlier times such intervention was regarded with repugnance. But the principle then declared has been sapped on the one side by the conspiracies of tyranny seeking the suppression of liberal institutions, and on the other by a generous

[1] Speech on the Treaty of Peace with America, April 11, 1815: Hansard's Parliamentary Debates, Vol. XXX. col. 525.

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sympathy breaking forth from time to time in their support. According to old precedents, most of which are found in the gossipping book of Wicquefort,[1] whence they have been copied by Mr. Wildman, in his "Institutes of International Law,"[2] even *foreign intercession* was prohibited. Not even in the name of charity could one ruler speak to another on the domestic affairs of his government. Peter, King of Aragon, was astonished at a proposed embassy from Alphonso, King of Castile, entreating mercy for rebels. Charles the Ninth of France, a detestable monarch, in reply to ambassadors of the Protestant princes of Germany, pleading for his Protestant subjects, insolently declared that he required no tutors to teach him how to rule. And yet this same sovereign did not hesitate to ask the Duke of Savoy to receive certain subjects "into his benign favor, and to restore and reëstablish them in their confiscated estates."[3] In this appeal there was a double inconsistency; for it was not only interference in the affairs of another prince, but it was in behalf of Protestants, only a few months before the Massacre of St. Bartholomew. Henry the Third, successor of Charles, and another detestable monarch, in reply to the Protestant ambassadors, announced that he was a sovereign prince, and ordered them to leave his dominions. Louis the Thirteenth was of milder nature, and yet, when the English ambassador, the Earl of Carlisle, presumed to speak in favor of the Huguenots, he intimated that no interference between the King of France and his subjects could be approved. The Cardinal Richelieu, who governed France so long,

[1] L'Ambassadeur et ses Fonctions, Liv. II. sec. 4.

[2] Vol. I. pp. 51–55.

[3] Guizot, History of Oliver Cromwell (London, 1854), Vol. II. p. 210.

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learning that an attempt was made to procure the intercession of the Pope, stopped it by a message to his Holiness, that the King would be displeased by any such interference. The Pope himself, on another recorded occasion, admitted that it would be a pernicious precedent for a subject to negotiate terms of accommodation through a foreign prince. On still another occasion, when the King of France, forgetting his own rule, interposed in behalf of the Barberini family, Innocent the Tenth declared, that, having no desire to interfere in the affairs of France, he trusted his Majesty would not interfere in his. Queen Christina of Sweden, merely hinting a disposition to proffer good offices for the settlement of the unhappy divisions in France, was told by the Queen Regent that she need give herself no trouble about them, and one of her own ministers at Stockholm declared that the overture was properly rejected. Nor were the States General of Holland less sensitive. They even refused audience to the Spanish ambassador seeking to congratulate them on the settlement of a domestic question; and when the French ambassador undertook to plead for Roman Catholics, the States, by formal resolution, denounced his conduct as inconsistent with the peace and constitution of the Republic, all of which was communicated to him by eight deputies, who added in speech whatever the resolution seemed to want in plainness.

Nor is England without similar example. Louis the Thirteenth, shortly after the marriage of his sister Henrietta Maria with Charles the First, consented that the English ambassadors should interpose for French Protestants; but when the French ambassador in England requested the repeal of a law against Roman Catholics,

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Charles expressed his surprise that the King of France should presume to intermeddle in English affairs. Even as late as 1746, when, after the Battle of Culloden, the Dutch ambassador in France was induced to address the British Government in behalf of the unfortunate Charles Edward, to the effect, that, if taken, he should not be treated as a rebel, it is recorded that this intercession was greatly resented by the British Government, which, not content with apology from the unfortunate official, required that he should be rebuked by his own Government also.[1] And this is British testimony with regard to intervention in a civil war, even when it took the mildest form of intercession for the life of a prince.

In face of such repulses, all these nations, at different times, practised intervention in every variety of form, — sometimes by intercession or "good offices" only, sometimes by mediation, and often by arms. Even these instances attest the intermeddling spirit; for such intervention, however received, was at least attempted.

Two precedents belonging to the earlier period deserve to stand apart, not only for historic importance, but for applicability to our times. The first was the effort to institute mediation between King Charles the First and his Parliament, attempted by Cardinal Mazarin, that powerful minister, who, during the minority of Louis the Fourteenth, swayed France. The civil war had been waged for years; good men on each side had fallen, — Falkland fighting for the King, and Hampden fighting for the Parliament, — and other costliest blood been shed on the fields of Edgehill, Newbury, Marston Moor, and Naseby, when the ambitious Cardinal, wish-

[1] Martens, Causes Célèbres (2me édit.), Tom. II. pp. 40–51.

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ing to serve the King, promised, as Clarendon relates, "to press the Parliament so imperiously, and to denounce a war against them, if they refused to yield to what was reasonable."[1] For this important service he selected the famous Pomponne de Bellièvre, of a family tried in public duties, — himself President of the Parliament of Paris and peer of France, — conspicuous in personal qualities as in place, whose beautiful head, preserved by the graver of Nanteuil, is illustrious in Art, and whose dying charity lives still in the great hospital of the Hôtel Dieu, at Paris. Arriving at London, the graceful ambassador presented himself to that Long Parliament which knew so well how to guard English rights. At once every overture was rejected in formal proceedings, from which I copy these words: "We do declare that we ourselves have been careful to improve all occasions to compose these unhappy troubles, *yet we have not, neither can we, admit of any mediation or interposing betwixt the King and us by any foreign prince or state.* And we desire that his Majesty, the French King, will rest satisfied with this our resolution and answer."[2] On the committee which drew this reply was John Selden, unsurpassed for learning and ability in the whole splendid history of the English bar, in every book of whose library was written, "Before everything, Liberty," and also that Harry Vane whom Milton, in one of his most inspired sonnets, addresses as

> "Vane, young in years, but in sage counsel old,
> Than whom a better Senator ne'er held
> The helm of Rome, when gowns, not arms, repelled
> The fierce Epirot and the African bold."

[1] History of the Rebellion (Oxford, 1826), Book X. Vol. V. p. 409.

[2] Parliamentary History of England, Vol. XV. p. 51 (London, 1763). Journals of the House of Commons, Vol. IV. pp. 622, 623, 624, July 22, 1646.

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The answer of such men is a precedent for us, especially should England, taking up the rejected policy of Mazarin, presumptuously send any ambassador to stay the Republic in its war with Slavery.

The same heart of oak, so strenuous to repel intervention of France between King and Parliament, was not less strenuous the other way, when intervention could serve the rights of England or the principles of religious liberty. Such was England when ruled by the great Protector, called in his own day "chief of men." No nation so powerful as to be exempt from that irresistible intercession, where, beneath the garb of peace, was a gleam of arms. From France, even under the rule of Mazarin, he claimed respect for the Protestant name, which he insisted upon making great and glorious. From Spain, on whose extended empire the sun did not cease to shine, he required that no Englishman should be subject to the Inquisition. Reading to his Council a despatch from Admiral Blake, announcing justice obtained from the Viceroy of Malaga, Cromwell said, that "he hoped to make the name of Englishman as great as ever that of Roman had been."[1] In this same exalted mood he turned to propose mediation between Protestant Sweden and Protestant Bremen, "chiefly bewailing, that, being both his friends, they should so despitefully combat one against another," offering his assistance to "a commodious accommodation on both sides," and exhorting them "by no means to refuse any honest conditions of reconciliation."[2] Here was intervention between nation and nation; but it was soon fol-

[1] Burnet, History of his Own Time, Vol. I. p. 81.

[2] Letters of State, — The Protector to Charles Gustavus, and to the Consuls and Senators of Breme, October 26, 1654: Milton's Prose Works (ed. Symmons), Vol. IV. pp. 375–377.

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lowed by intervention in the internal affairs of a distant country, which of all the acts of Cromwell is the most touching and sublime. The French ambassador, while at Whitehall, urging the signature of a treaty, was unexpectedly interrupted by news from a secluded valley of the Alps, far away among mountain torrents, affluents of the Po, that a company of pious Protestants, for centuries gathered there, keeping the truth pure, "when all our fathers worshipped stocks and stones," were suffering terrible persecution from their sovereign, Emanuel of Savoy. Despoiled of all possessions and liberties, brutally driven from their homes, given over to licentious and infuriate violence, and then turning in self-defence, they had been "slain by the bloody Piemontese, that rolled mother with infant down the rocks"; and it was reported that French troops took part in the dismal transaction. The Protector heard the story, and his pity flashed into anger. He would not sign the treaty until France united with him in securing justice to these humble sufferers, whom he called the Lord's people. For their relief he contributed out of his own purse two thousand pounds, and authorized a general collection throughout England, which reached a large sum; but besides money, he set apart a day of humiliation and prayer for them. Nor was this all. "I should be glad," wrote his Secretary, Thurloe, "to have a most particular account of that business, and to know what is become of those poor people, for whom our very souls here do bleed."[1] But a pen mightier than that of any plodding secretary was enlisted in this pious intervention. It was John Milton, glowing with that indigna-

[1] Secretary Thurloe to Mr. Pell, May 11, 1655: Vaughan's Protectorate, Vol I. p. 176.

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tion which his sonnet "On the Massacre in Piemont" makes immortal in the heart of man, who wrote the magnificent despatches, where the English nation of that day, after declaring itself "linked together" with its distant brethren, "not only by the same tie of humanity, but by joint communion of the same religion," naturally and grandly insisted that "both this edict and whatsoever may be decreed to their disturbance upon the account of the Reformed Religion" should be abrogated, "and that an end be put to their oppressions."[1] Not content with this call upon the Duke of Savoy, the Protector appealed to Louis the Fourteenth and his Cardinal Minister, to the States General of Holland, the Protestant Cantons of Switzerland, the King of Denmark, the King of Sweden, and even to the Protestant Reformed Prince of remote Transylvania, — and always by the pen of Milton, — rallying these princes and powers in joint entreaty and intervention, and, if need were, to "some other course to be speedily taken, that such a numerous multitude of our innocent brethren may not miserably perish for want of succor and assistance."[2] The Regent of Savoy, daughter of Henry the Fourth, professed to be affected by this English charity, and announced for her Protestant subjects a free pardon, and also "such privileges and graces as could not but give the Lord Protector a sufficient evidence *how great a respect they bare both to his person and mediation.*"[3] But there was still delay. Meanwhile

[1] Letters of State, — The Protector to the Duke of Savoy, May, 1655: Milton's Prose Works (ed. Symmons), Vol. IV. p. 379.

[2] The Protector to Charles Gustavus: Ibid., p. 383.

[3] Morland, History of the Evangelical Churches of the Valleys of Piemont (London, 1658), p. 575. Guizot, History of Oliver Cromwell (London, 1854), Vol. II. p. 219.

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Cromwell began to inquire where in the Prince's territories English troops might debark, and Mazarin, anxious to complete the yet unfinished treaty, joined in requiring immediate pacification of the Valleys and the restoration of these persecuted people to their ancient liberties. It was done. Such is the grandest intervention of English history, inspired by Milton, enforced by Cromwell, and sustained by Louis the Fourteenth with his Cardinal Minister by his side, while foreign nations watched the scene.

This great instance, constituting an inseparable part of the Protector's glory, is not the last where England intervened for Protestant liberties. Troubles, beginning in France with the Revocation of the Edict of Nantes, broke forth in the rebellion of the Camisards, smarting under the Revocation. Sheltered by the mountains of the Cevennes, and nerved by a good cause, with the device "Liberty of Conscience" on their standards, they made head against two successive marshals of France, and perplexed the old age of Louis the Fourteenth, whose arms were already enfeebled by foreign war. At last, through the mediation of England, the great monarch made terms with his Protestant rebels, and this civil war was brought to a close.[1]

Intervention, more often armed than unarmed, showed itself in the middle of the last century. All decency was set aside, when Frederick of Prussia, Catharine of Russia, and Maria Theresa of Austria invaded and partitioned Poland, under pretext of suppressing anarchy. Here was intervention with a vengeance, and on the side of arbitrary power. Such is human inconsistency,

[1] Merlin, Répertoire Universel et Raisonné de Jurisprudence, art. Ministre Public, Sect. II. xii.

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almost at the same time was another intervention in the opposite direction. It was the armed intervention of France, followed by that of Spain and Holland, in behalf of American Independence. Spain began by offer of mediation with a truce, which was accepted by France on condition that meanwhile the United States should be independent *in fact*.[1] Then came, in 1788, the armed intervention of Prussia to sustain the Orange faction in Holland, followed soon by the compact between Great Britain, Prussia, and Holland, known as the Triple Alliance, which entered upon the business of its copartnership by armed intervention to reconcile the insurgent provinces of Belgium with the German Emperor and their ancient Constitution. As France began to shake with domestic troubles, mediation in her affairs was proposed. Among the papers of Burke, in 1791, is the draught of a memorial, in the name of the British Government, offering what he calls "this healing mediation."[2] Then came the vast coalition for armed intervention in France to put down the Republic. This dreary cloud was for a moment brightened by a British attempt in Parliament, through successive debates, to institute an intercession for Lafayette, immured in the dungeons of European despotism. "It is reported," said one of the orators, "that America has solicited the liberation of her unfortunate adopted fellow-citizen. . . . . Let British magnanimity be called to the aid of American gratitude, and exhibit to mankind a noble proof, that, wherever the principles of genuine liberty prevail, *they never fail to inspire sentiments of*

[1] Martens, Causes Célèbres (2me édit.), Tom. III. p. 196.

[2] Hints for a Memorial to be delivered to Monsieur de M. M.: Works (London, 1801), Vol. VII. pp. 3–5.

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generosity, feelings of humanity, and a detestation of oppression." [1]

Meanwhile France, against whom all Europe intervened, played her part of intervention, and the scene was Switzerland. In the unhappy disputes between the aristocratic and democratic parties by which this Republic was distracted, French mediation became chronic, beginning in 1738, when it found partial apology in the invitation of several cantons and of Geneva; occurring again in 1768, and again in 1782. The mountain Republic, breathing the air of Freedom, was naturally moved by the convulsions of the French Revolution. Civil war ensued, and grew in bitterness. At last, when France herself was composed under the powerful arm of the First Consul, we find him turning to compose Swiss troubles. He was a military ruler, and always acted under the instincts of military power. By proclamation, dated at the palace of St. Cloud, September 30, 1802, Bonaparte declared that for three years the Swiss had been slaying each other, and that, if left to themselves, they would continue to slay each other for three years more, without reaching any understanding; that, at first, he had resolved not to interfere, but that he now changed his mind, and announced himself as mediator of their difficulties, proclaiming confidently that his mediation would be efficacious, as became the great people in whose name he spoke. Deputies from the cantons, together with the chief citizens, were summoned to declare the means of restoring the Union, securing peace, and reconciling all parties.[2] This was armed me-

[1] Speech of General Fitzpatrick in the House of Commons, March 17, 1794: Hansard, Parliamentary History, Vol. XXXI. col. 37, 38. See also Vol. XXXII. col. 1348 seqq.

[2] Garden, Histoire des Traités de Paix, Tom. VIII. pp. 21–28.

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diation; but Switzerland was weak and France strong, while the declared object was union, peace, and reconciliation. I know not if all this ensued, but the civil war was stifled, and the Constitution was established by what is entitled in history the Act of Mediation.

From that period down to the present moment, intervention in the internal affairs of other nations has been a prevailing practice, now cautiously and peaceably, now offensively and forcibly. Sometimes it was against the rights of men, sometimes it was in their favor. Sometimes England and France stood aloof, sometimes they took part. The Congress of Vienna, which undertook to settle the map of Europe, organized universal and perpetual intervention in the interest of monarchical institutions and existing dynasties. This compact was renewed at the Congress of Aix-la-Chapelle, in 1818, with the explanatory declaration, that the five great powers would never assume jurisdiction over questions concerning the rights and interests of another power, *except at its request*, and without inviting such power to take part in the conference, — a concession obviously adverse to any liberal movement. Meanwhile appeared the Holy Alliance, specially to watch and control the revolutionary tendencies of the age; but into this combination England most honorably declined to enter. The other powers were sufficiently active. Austria, Russia, and Prussia did not hesitate at the Congress of Laybach, in 1821, to institute armed intervention for the suppression of liberal principles in Naples; and again, two years later, at the Congress of Verona, these same powers, together with France, instituted another armed intervention to suppress liberal principles in Spain, which ultimately led to the invasion of that

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kingdom and the overthrow of its Constitution. France was the belligerent agent, and would not be turned aside, although the Duke of Wellington at Verona, and Mr. Canning at home, sought to arrest her armies by the mediation of Great Britain, which was directly sought by Spain and directly refused by France. The British Government, in admirable letters, composed with unsurpassed skill, and constituting a noble page of International Law, "disclaimed for itself, and denied for other powers, the right of requiring any changes in the internal institutions of independent states, *with the menace of hostile attack in case of refusal*"; and bravely declared to the imperial and royal interventionists, that, "so long as the struggles and disturbances of Spain should be confined within the circle of her own territory, they could not be admitted by the British Government to afford any plea of foreign interference"; and in still another note repeated that a "*menace of direct and imminent danger could alone, in exception to the general rule, justify foreign interference.*"[1] These were the words of Mr. Canning; but even Lord Castlereagh, in an earlier note, asserted the same limitation, which, at a later day, had the unqualified support of Lord Grey, and also of Lord Aberdeen. Justly interpreted, they leave no apology for armed intervention, except in case of direct and imminent danger, when a nation, like an individual, may be thrown upon the great right of self-defence.

Great Britain bore testimony by what she did, as well as by what she refused to do. Even while resisting the armed intervention of the great conspiracy, her Government intervened sometimes by mediation and sometimes by arms. Early in the contest between Spain and her

[1] Phillimore's International Law, Vol. III. pp. 757, 760, 763.

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colonies she consented to act as mediator, on the invitation of the former, in hope of effecting reconciliation; but Spain declined the mediation she had invited. From 1812 to 1823, Great Britain constantly repeated her offer. In the case of Portugal she went further. Under the counsels of Mr. Canning, whose speech on the occasion was of the most memorable character, she intervened by landing troops at Lisbon; but this intervention was vindicated by the obligations of treaty. Next came the greater instance of Greece, when the Christian powers of Europe intervened to arrest a protracted struggle and to save this classic land from Turkish tyranny. Here the first step was *a pressing invitation from the Greeks* to the British and French Governments for their mediation with the Ottoman Porte. These powers united with Russia in proffering the much desired intervention, which the Greeks at once accepted and the Turks rejected. Already battle raged fiercely, reddened by barbarous massacre. Without delay, the allied forces were directed to compel the cessation of hostilities, which was accomplished by the destruction of the Turkish fleet at Navarino and the occupation of the Morea by French troops. At last, under the continued mediation of these powers, the independence of Greece was recognized by the Ottoman Porte, and another commonwealth consecrated to Freedom took its place in the Family of Nations. But mediation in Turkish affairs did not stop. The example of Greece was followed by Egypt, whose provincial chief, Mehemet Ali, rebelled, and by genius for war succeeded in dispossessing the Ottoman Porte not only of Egypt, but of other possessions also. This civil war was first arrested by temporary arrangement at Kutaieh,

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in 1833, under the mediation of Great Britain and France, and finally ended by an armed mediation in 1840, when, after elaborate and irritating discussions threatening to involve Europe, a treaty was concluded at London between Great Britain, Russia, Austria, and Prussia, by which the Pacha was compelled to relinquish his conquests, while he was secured in the Government of Egypt as perpetual vassal of the Porte. France, dissatisfied with the terms of this adjustment, stood aloof from the treaty, which found apology, such as it had, first, in the invitation of the Sultan, and, secondly, in the desire to preserve the integrity of the Turkish Empire, as essential to the balance of power and the peace of Europe, to which may also be added the desire to stop effusion of blood.

Before the Eastern questions were settled, other complications commenced in Western Europe. Belgium, restless from the French Revolution of 1830, rose against the House of Orange and claimed independence. Civil war ensued; but the great powers promptly intervened, even to the extent of arresting a Dutch army on its march. Beginning with armistice, there was a long and fine-spun negotiation, which, assuming the guise alternately of pacific mediation and of armed intervention, ended in the established separation of Belgium from Holland, and its recognition as an independent nation. Do you ask why Great Britain intervened on this occasion? Lord John Russell, in the course of debate at a subsequent day, declared that a special motive was "the establishment of a free constitution."[1] Meanwhile the Peninsula of Spain and Portugal was torn by civil war.

[1] Speech on Intervention in Portugal, June 11, 1847: Hansard's Parliamentary Debates, 3d Ser., Vol. XCIII. col. 466.

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The regents of these two kingdoms respectively appealed to Great Britain and France for aid, especially in the expulsion of the pretender Don Carlos from Spain and the pretender Dom Miguel from Portugal. For this purpose the Quadruple Alliance was formed in 1834. The moral support from this treaty is said to have been important, but Great Britain was compelled to provide troops. This intervention, however, was *at the solicitation of the actual Governments.* Even after Spanish troubles were settled, war still lingered in the sister kingdom, when, in 1847, the Queen addressed herself to her allies, among whom was Great Britain, the ancient patron of Portugal, who undertook to mediate between her and her insurgent subjects, in the declared hope of composing the difficulties "in a just and permanent manner, with all due regard to the dignity of the crown on the one hand, and to the constitutional liberties of the nation on the other."[1] The insurgents did not submit until after military demonstrations. Liberty and Peace were the two watchwords.

Then occurred the European uprising of 1848, with France once more a Republic; but Europe, wiser grown, did not interfere even so much as to write a letter. The case was different with Hungary, whose victorious armies, radiant with liberty regained, expelled the Austrian power only to be arrested by the armed intervention of the Russian Czar, who yielded to the double pressure of invitation from Austria and fear that successful insurrection might extend into Poland. It was left for France, in another country, with strange inconsist-

[1] Viscount Palmerston to Sir Hamilton Seymour, February 16, 1847: Correspondence relating to the Affairs of Portugal, p. 192: Parliamentary Papers, 1847, Vol. LXVIII.

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ency, to play the part which Russia played in Hungary. Rome, after rising against the temporal power of the Pope and proclaiming the Republic, was occupied by a French army, which expelled the republican magistrates, and, though fourteen years are already passed since that unhappy act, the occupation still continues. From this military intervention Great Britain stands aloof. In a despatch, dated at London, January 28, 1849, Lord Palmerston makes a permanent record, to the honor of his country, as follows: "Her Majesty's Government would, upon every account, and not only upon abstract principle, but with reference to the general interests of Europe, and from the value which they attach to the maintenance of peace, *sincerely deprecate any attempt to settle the differences between the Pope and his subjects by the military interference of foreign powers.*"[1] This statesman gives further point to the position of Great Britain in contrast with France, when he says: "Armed intervention *to assist in retaining a bad Government would be unjustifiable.*"[2] Such was the declaration of the Lord Palmerston of that day. How much more unjustifiable the strange assistance now proposed *to found* a bad Government! The British minister insisted that the differences should be accommodated by "the diplomatic interposition of friendly powers," which he declared a "much better mode of settlement than an authoritative imposition of terms by the force of foreign arms."[3] In harmony with this policy, Great Britain, during the same year, united with France in proffering mediation between the insurgent Sicilians and the King of Naples,

[1] Phillimore, International Law, Vol. II. p. 676.
[2] Ibid., p. 448.
[3] Ibid., p. 676.

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the notorious Bomba, in the hope of helping good government and liberal principles. Not disheartened by rebuff, these two powers, in 1856, united in friendly remonstrance to the same tyrannical sovereign against the harsh system of political arrests, and against his cruelty to good citizens thrust without trial into the worst of prisons. The advice was indignantly rejected, and the two powers that gave it withdrew their ministers from Naples. The sympathy of Russia was on the wrong side, and Prince Gortschakoff, in a circular, while admitting, that, "as a consequence of friendly forethought, one Government might give advice to another," declared, that "to endeavor by threats or a menacing demonstration to obtain from the King of Naples concessions in the internal affairs of his Government is a violent usurpation of his authority, and an open declaration of the right of the strong over the weak."[1] This was practically answered by Lord Clarendon, speaking for Great Britain at the Congress of Paris, when, admitting the principle that no Government has the right to interfere in the internal affairs of other states, he declares that there are cases where an exception to this rule becomes equally a right and a duty; that peace must not be broken, but that there is no peace without justice; and that therefore the Congress must let the King of Naples know its desire for the amelioration of his Government, and must demand amnesty for political offenders suffering without trial.[2] This language was bold beyond the practice of diplomacy, but the intervention it proposed was on the side of humanity.

[1] Annual Register for 1856, pp. 236], 237].
[2] Ibid., p. 219].

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I must draw this chapter to a close, although the long list is not yet exhausted. Even while I speak, we hear of intervention by England and France in the civil war between the Emperor of China and his subjects, — and also in that other war between the Emperor of Russia on the one side and the Poles whom he claims as subjects on the other, but with this difference, that in China these powers take the part of the existing Government, while in Poland they intervene against the existing Government. In the face of positive declarations of neutrality, the British and French admirals have united their forces with the Chinese; but thus far in Poland, although there is no declaration of neutrality, the intervention is unarmed. In both these instances we witness a common tendency, directed, it may be, by the interests or prejudices of the time, and, so far as it has proceeded, it is, at least in Poland, on the side of liberal institutions. But, alas for human consistency! the French Emperor is now intervening in Mexico with armies and navies to build an imperial throne for an Austrian Archduke.

There is one long-continued British intervention, which speaks now with controlling power; and it is on this account that I reserve it for the close of what I have to say on this head. Though not without original shades of dark, it has for more than half a century been a shining example to the civilized world. I refer to that *intervention against Slavery*, which, from its first adoption, has been so constant and brilliant as to make us forget the earlier *intervention in behalf of Slavery*, when, for instance, at the Peace of Utrecht, Great Britain intervened to extort the detestable privilege of supplying slaves to

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Spanish America at the rate of four thousand eight hundred yearly during the space of thirty years, and then again, at the Peace of Aix-la-Chapelle, higgled for a yet longer sanction of the ignoble intervention; nay, it almost makes us forget the kindred intervention, at once sordid and criminal, by which this power counteracted all efforts for the prohibition of the slave-trade even in its own colonies, and thus helped to fasten Slavery upon Virginia and Carolina. The abolition of the slave-trade by Act of Parliament, in 1807, was the signal for a change of history. A British poet at the time gave exulting expression to the grandeur of the epoch:—

> "'Thy chains are broken, Africa, be free!'
> Thus saith the island-empress of the sea;
> Thus saith Britannia. O ye winds and waves,
> Waft the glad tidings to the land of slaves!"[1]

Curiously, it was the other color which gained the first fruits of this revolution, by triumphant intervention for the overthrow of White Slavery in the Barbary States. The old hero of Acre, Sir Sidney Smith, released from long imprisonment in France, sought to organize a "holy league" for this purpose; the subject was discussed at the Congress of Vienna; and the agents of Spain and Portugal, anxious for the punishment of their piratical neighbors, argued, that, because Great Britain had abolished for itself the traffic in African slaves, therefore it must see that whites were no longer enslaved in the Barbary States. The argument was less logical than humane. But Great Britain undertook the work. With a fleet complete at all points, consisting of five line-of-battle ships, five frigates, four bomb-vessels, and five gun-brigs, Lord Exmouth ap-

[1] Montgomery, The West Indies, Part I. 1–4.

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proached Algiers, where he was joined by a considerable Dutch fleet, anxious to take part. "If force must be resorted to," said the Admiral in general orders shortly before, "we have the consolation of knowing that we fight in the sacred cause of Humanity, and cannot fail of success." Less than half a day was enough, with such a force in such a cause. The formidable castles of the great Slavemonger were battered to pieces, and he was compelled to sign a treaty, confirmed under a salute of twenty-one guns, which in its first article stipulated "the abolition of Christian Slavery forever." Glorious and beneficent intervention! Not inferior to that renowned instance of Antiquity, where the Carthaginians were required to abolish the practice of sacrificing their own children, — a treaty which has been called the noblest of history, because stipulated in favor of human nature. The Admiral who had thus triumphed was hailed as Emancipator. He received a new rank in the peerage, and a new blazonry on his coat of arms. The rank is continued in his family, and on their shield, in perpetual memory of this great transaction, is still borne *a Christian slave holding aloft the Cross and dropping his broken fetters.* But the personal satisfactions of the Admiral were more than rank or heraldry. In his despatch to the Government, describing the battle, and written at the time, he says: "To have been one of the humble instruments in the hands of Divine Providence for bringing to reason a ferocious Government and destroying forever the insufferable and horrid system of Christian Slavery, can never cease to be a source of delight and heartfelt comfort to every individual happy enough to be employed in it."[1]

[1] Osler's Life of Exmouth, pp. 298, 333, 482.

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I have said too much with regard to an instance, which, though beautiful and important, is only a parenthesis in the grander and more extensive intervention against African Slavery, which was already organizing, destined at last to embrace the whole human family. Even before Wilberforce triumphed in Parliament, Great Britain intervened with Napoleon, in 1806, pressing him to join in the abolition of the slave-trade; but he flatly refused. What France would not then yield was exacted from Portugal in 1810, from Sweden in 1813, and from Denmark in 1814. An ineffectual attempt was made to enlist Spain, even by temptation of pecuniary subsidies, — and an appeal was made to the restored monarch of France, Louis the Eighteenth, with the offer of a sum of money outright or the cession of a West India island, in consideration of the desired abolition. The Prince Regent wrote with his own hand to the latter, assuring him that he could not give a more acceptable proof of his regard than by consenting to the abolition. Had gratitude to a benefactor prevailed, these powers could not have resisted; but Lord Castlereagh confessed in the House of Commons, that in France there was distrust of the British Government "even among the better classes of people," who thought that its zeal in this behalf was prompted by desire to injure the French colonies and commerce, rather than by benevolence. The British minister was more successful with Portugal, where pecuniary equivalents led to a supplementary treaty, in January, 1815. This was followed by the declaration of the Congress of Vienna, on motion of Lord Castlereagh, 8th February, 1815, denouncing the African slave-trade "as repugnant to the principles of humanity and of universal morality." Mean-

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while Napoleon returned from Elba, and what British intervention failed to accomplish with the Bourbon monarch, and the Emperor once flatly refused, was now spontaneously done by him, doubtless in the hope of conciliating British sentiment. His hundred days of power were signalized by an ordinance abolishing the slave-trade in France and her colonies. Louis the Eighteenth, once again restored by British arms, and with the shadow of Waterloo resting upon France, could not do less than ratify the imperial ordinance by a royal assurance that "the traffic was henceforth forever forbidden to all the subjects of his most Christian Majesty."[1] Holland came under the same influence, and accepted the restitution of her colonies, except the Cape of Good Hope and Guiana, on condition of the entire abolition of the slave-trade in the restored colonies, and also everywhere else beneath her flag. Spain was the most indocile; but this proud monarchy, under whose auspices the African slave-trade first came into being, at last yielded. By the treaty of Madrid, of 23d September, 1817, extorted by Great Britain, it stipulated the immediate abolition of the trade north of the equator, and also, after 1820, its abolition everywhere, in consideration of four hundred thousand pounds, the price of Freedom, paid by the other contracting party. In vindication of this intervention, Wilberforce declared in Parliament, that "the grant to Spain would be more than repaid to Great Britain in commercial advantages by the opening of a great continent to British industry," — all of which was impossible, if the slave-trade was allowed to continue under the Spanish flag.[2]

[1] Wheaton, History of the Law of Nations, p. 605.

[2] Speech on the Treaty with Spain, February 9, 1818: Hansard's Parliamentary Debates, Vol. XXXVII. col. 248.

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At the Congress of Aix-la-Chapelle, in 1818, and of Verona, in 1822, Great Britain continued her intervention against Slavery. Chateaubriand, in his history of the latter Congress, pauses to express his admiration of the "singular perseverance" in this cause manifested by her at all Congresses, amidst questions the most urgent and interests the most pressing.[1] Here her primacy was undisputed, and her fame complete. It was the common remark of Continental publicists, that she "made the cause her own."[2] One of them portrays her vividly, since 1810 waging "relentless war" against the principle of the slave-trade, and by this "crusade," undertaken in the name of Humanity, making herself the "declared protectress" of the African race. These are the words of a French authority.[3] According to him, it is nothing less than "relentless war" and a "crusade" which she has waged, and the position which she has achieved is that of "protectress" of the African race, — while no less a person than Chateaubriand recognizes with admiration the "singular perseverance" she has displayed in this practical extension of Christianity. Not content with imposing her magnanimous system upon the civilized world, she carried it among the tribes and chiefs of Africa, who, by her omnipresent intervention, were summoned to renounce a barbarous and criminal custom. By a Parliamentary Report, it appears that in 1849 there were twenty-four treaties in force between Great Britain and foreign civilized powers for the suppression of the slave-trade, and

[1] Congrès de Vérone (2me édit.), Tom. I. p. 78.

[2] Martens et Cussy, Recueil de Traités, Conventions, etc., Tom. V. p. 440.

[3] Cussy, Phases et Causes Célèbres, Tom. I. p. 157; Tom. II. pp. 362, 363.

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also forty-two similar treaties between Great Britain and native chiefs of Africa.[1]

This intervention was not by treaties only; it was by correspondence and circulars also. And here I approach a part of the subject which illustrates the vivacity of its character. All British ministers and consuls were so many pickets on constant guard in the outposts. They were held to every service by which the cause could be promoted, even to translating and printing documents against the slave-trade, especially in countries where, unhappily, it was still pursued. There was the Pope's Bull of 1839, which Lord Palmerston transmitted for this purpose to his agents in Cuba, Brazil, and even in Turkey, some of whom were unsuccessful in their efforts to obtain its publication, although, curiously enough, it was published in Turkey.[2]

Such zeal could not stop at the abolition of the traffic. Accordingly, Great Britain, by Act of Parliament, in 1834, enfranchised all the slaves in her own possessions, and thus again secured to herself the primacy of a lofty cause. The intervention was now openly declared to be against Slavery itself, assuming its most positive character while Lord Palmerston was Foreign Secretary, — and I say this sincerely to his great honor. Throughout his long life, among all the various concerns in which he has acted, there is nothing to be remembered hereafter with such gratitude. By his untiring diplomacy her Majesty's Government constituted itself a vast Abolition Society, with the whole world for its field. It

[1] Report from Select Committee of the House of Lords on the African Slave-Trade, July 23, 1849: Parliamentary Papers, 1850, Vol. IX. pp. 370–373.

[2] Parliamentary Papers, 1841, Vol. XXX.: Correspondence relating to the Slave-Trade, Class B, Nos. 41, 178, 201; Class C, No. 45; Class D, No. 25.

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was in no respect behind the famous World's Convention against Slavery, held at London in June, 1840, with Thomas Clarkson, the pioneer Abolitionist, as President; for the strongest declarations of this Convention were adopted by Lord Palmerston as "the sentiments of her Majesty's Government," and communicated officially to British functionaries in foreign lands. The Convention declared "the utter injustice of Slavery in all its forms, and the evil it inflicts upon its miserable victims, and the necessity of employing every means, moral, religious, and pacific, for its complete abolition, an object most dear to the members of this Convention, and for the consummation of which they are especially assembled."[1] These words became the words of the British Government, and in circular letters were sent over the world.

It was not enough to declare the true principles. They must be enforced. Spain and Portugal hung back. The Secretary of the Antislavery Society was sent "to endeavor to create in those countries a public feeling in favor of the abolition of Slavery"; and the British minister at Lisbon was desired by Lord Palmerston to "afford all the assistance and protection in his power for promoting the object of his journey."[2] British functionaries abroad sometimes backslided. This was corrected by circulars setting forth "that it would be unfitting that any officer holding an appointment under the British Crown should, either directly or indirectly, hold or be interested in slave property."[3] The Parliamentary Papers which attest the universality of

[1] Parliamentary Papers, 1841, Vol. XXX.: Correspondence relating to the Slave-Trade, Class A, No. 143.

[2] Ibid.: Correspondence, Class B, No. 116.

[3] Ibid.: Correspondence, Class A, No. 143.

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this instruction show the completeness with which it was executed. The consul at Rio Janeiro, in slaveholding Brazil, had among his domestics three negro slaves, two men and a woman; "of the men one was a groom and the other a waiter, and the woman he was forced to hire to nurse one of his children"; but he discharged them at once, under the antislavery discipline of the British Foreign Office, and Lord Palmerston, in formal despatch, "expresses his satisfaction."[1] In Cuba, at the time of its reception, there was not a single resident officer, holding under the British Crown, "who was entirely free from the charge of countenancing Slavery." But only a few weeks afterwards it was officially reported from Havana that there was "not a single British officer residing within the consular jurisdiction who had not relinquished, or was not at least preparing to relinquish, this odious practice."[2] This was quick work. The metamorphosis was prompt as anything in ancient fable. Every person holding office under the British Government at once set his face against Slavery, *and the way was by having nothing to do with it, even in employing or hiring the slave of another, — nothing, "directly or indirectly."*

Lord Palmerston, acting in the name of the British Government, did not stop with changing British officials into practical Abolitionists, whenever they were in foreign countries. He sought to enlist other European Governments, and to this end requested them to forbid their functionaries residing in slaveholding communities to be interested in slave property or in any

[1] Parliamentary Papers, 1842, Vol. XLIII.. Correspondence relating to the Slave-Trade, Class B, Nos. 525, 526.

[2] Ibid.: Correspondence, Class B, No. 120.

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holding or hiring of slaves. Denmark for a moment hesitated, from unwillingness to debar them from acting according to the laws where they resided, when the minister at once cited in support of his request the example of Belgium, Hanover, Holland, Sweden, Naples, Portugal, and Sardinia, all without delay having yielded to this British intervention, and Denmark ranged herself in the list.[1] Nor was this indefatigable Propaganda confined to the Christian powers. With a sacred pertinacity it reached into distant Mohammedan regions, where Slavery was imbedded not only in the laws, but the habits, the social system, and the very life of the people, and called upon the Government to act against it. No impediment deterred, — no prejudice, national or religious. To the Shah of Persia, ruling a vast, outlying slave empire, Lord Palmerston announced the desire of the British Government "to see the slave-trade put down and the condition of Slavery abolished in every part of the world"; "that it conceived much good might be accomplished in these respects, even in Mohammedan countries, by steady perseverance, and by never omitting to take advantage of favorable opportunities"; and "that the Shah would be doing a thing extremely acceptable to the British Government and nation, if he would issue a decree prohibiting for the future the importation of slaves of any kind into Persia, and making it penal for a Persian to purchase slaves."[2] To the Sultan of Turkey, whose mother was a slave, whose wives were all slaves, and whose very counsellors, generals, and admirals were originally slaves, he

[1] Parliamentary Papers, 1842, Vol XLIII.: Correspondence relating to the Slave-Trade, Class B, No. 47; Vol XLIV., Class C, Nos. 17-27

[2] Ibid., Vol. XLIV.: Correspondence, Class D, No. 90.

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made a similar appeal, and he sought to win the dependent despot by reminding him that only in this way could he hope for that good-will which was so essential to his Government; "that the continued support of Great Britain will, for some years to come, be an object of importance to the Porte, — *that this support cannot be given effectually, unless the sentiments and opinions of the majority of the British nation shall be favorable to the Turkish Government, — and that the whole of the British nation unanimously desire, beyond almost anything else, to put an end to the cruel practice of making slaves.*"[1] Such, at that time, was the voice of the British people. Since Cromwell pleaded for the Vaudois, no nobler voice had gone forth. The World's Convention against Slavery saw itself transfigured, while platform speeches were transfused into diplomatic notes. The Convention, earnest for Universal Emancipation, declared that "*the friendly interposition* of Great Britain could be employed for no nobler purpose," and, as if to crown its work, in an address to Lord Palmerston, humbly and earnestly implored his Lordship to use his high authority for "connecting the overthrow of Slavery with the consolidation of Peace"; and these words were at once adopted in foreign despatches, as expressing the sentiments of her Majesty's Government.[2] Better watchwords could not be, nor any more worthy of the British name. *There can be no consolidation of Peace without the overthrow of Slavery.* This is as true now as when first uttered. Therefore is Great Britain still bound to her original faith; nor can she abandon the cause, of which she was

[1] Parliamentary Papers, 1841, Vol. XXX.: Correspondence relating to the Slave-Trade, Class D, No. 30; 1842, Vol. XLIV., Class D, No. 94.

[2] Ibid., 1841, Vol. XXX.: Correspondence, Class D, No. 27.

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the declared protectress, without betrayal of Peace, as well as betrayal of Liberty.

Even now while I speak this same conspicuous fidelity to a sacred cause is announced. The ship canal across the Isthmus of Suez, first attempted by the early Pharaohs, and at last resumed by French influence, under the auspices of the Pacha, is most zealously opposed by Great Britain for the declared reason that in its construction "forced labor" is employed, which this power cannot in conscience sanction. Not even to complete this vast beneficence, bringing East and West near together, for which mankind has waited throughout long centuries, will Great Britain depart from the rule so gloriously declared. Slavery is wrong, therefore not to be employed. The canal must stop, if it cannot be constructed without "forced labor."

The veteran statesman who did so much in this cause, weaving its golden thread into the tissue of his renown, dwelt on it with pride, and accepted for his country the primacy that had been awarded. Never, in his extended Parliamentary career, did Lord Palmerston rise to a higher mood, — not even when claiming for Englishmen all the immunities of Roman citizenship, — *Civis Romanus sum*, — than when he pictured the dependence of Africans on their constant friend. "If ever," said he, "by the assault of overpowering enemies, or by the errors of her misguided sons, England should fall, and her star should lose its lustre, with her fall, for a long period of time, would the hopes of the African, whether in his own continent or in the vast regions of America, be buried in the darkness of despair. I know well that in such case Providence would in due course of time raise up some other nation to inherit our principles and

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to imitate our practice; but, taking the world as it is, and states as they are constituted, I do not know — and I say it with regret and with pain — I do not know any nation that is now ready in this respect to supply our place."[1] And can it be that now, instead of the African, a rebellion inspired by Slavery turns to England with hope?

The honorable story of British intervention against Slavery is incomplete without showing how its generous ardor broke forth against our Republic, which was denounced as linked with Slavery. Literature, eloquence, and poetry lent themselves to expose the terrible inconsistency. Lord Russell stepped aside from the easy path of biography, to declare that among us "oxen and horses are better treated than the men and women of African blood," and then to proclaim "the cry of outraged humanity," "the current of human sympathy," and "the decrees of Eternal Justice," irresistible.[2] Lord Macaulay, in the House of Commons, thundered forth: "The Government of the United States has formally declared itself the patron, the champion, of Negro Slavery all over the world, the evil genius, the Arimanes, of the African race, and seems to take pride in this shameful and odious distinction. . . . . They put themselves at the head of the slave-driving interest throughout the world, just as Elizabeth put herself at the head of the Protestant interest; and wherever their favorite institution is in danger, are ready to stand by it as Elizabeth stood by the Dutch."[3] Thomas Campbell, fresh from

[1] Speech in the House of Commons, on the Sugar Duties, May 18, 1841: Hansard's Parliamentary Debates, 3d Ser., Vol. LVIII. col. 654, 655.

[2] Life and Times of Charles James Fox, Vol I. p. 365.

[3] Speech on the Sugar Duties, February 26, 1845: Speeches (London, 1854), p. 351.

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writing "Ye Mariners of England" and "Hohenlinden," struck at our Slavery in most scornful verses on the national flag: —

> "But what 's the meaning of the stripes?
> They mean your negroes' scars!" [1]

If these things, so bitterly said, were true, if Campbell, Macaulay, and Russell were right in their indignant rebuke, if Palmerston was justified in his eloquent pride, then must England make haste to turn away from a rebellion which seeks to reverse that noble intervention where the liberty of the African was a constant guide.

Here I close the historic instances illustrating the right and practice of foreign intervention. The whole subject is seen in these instances, teaching clearly what to avoid and what to follow. In this way, the Law of Nations, like History, gives its best lessons. For the sake of plainness, I gather up some of the conclusions.

Foreign intervention is *armed* or *unarmed*, although sometimes the two are not easily distinguishable. Unarmed intervention may have in it the menace of arms, or it may be war in disguise. When this is the case, it must be treated accordingly.

Armed intervention is war, and nothing less. Of course it can be vindicated only as war, and it must be resisted as war. Believing, as I do most profoundly, that war can never be a game, but must always be a crime when it ceases to be a duty, — a crime to be shunned, if not a duty to be performed swiftly and surely, — and that a nation, like an individual, is not

[1] To the United States of North America.

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permitted to take the sword except in just self-defence, — I find the same limitation in armed intervention, which becomes unjust invasion in proportion as it departs from just self-defence. Under this head is naturally included all that intervention moved by a tyrannical or intermeddling spirit, because such intervention, whatever its professions, is essentially hostile,— as when Russia, Prussia, and Austria partitioned Poland, when the Holy Alliance intermeddled everywhere and menaced even America, or when Russia intervened to crush the independence of Hungary, or France to crush the Roman Republic. All such intervention is inexcusable, illegal, and scandalous. Its vindication is found only in the effrontery that might makes right.

Unarmed intervention is of a different nature. If sincerely unarmed, it may be regarded as obtrusive, but not hostile. It may assume the form of mediation or the proffer of good offices, at the invitation of both parties, or, in the case of civil war, at the invitation of the original authority. With such invitation, this intervention is proper and honorable; without such invitation, it is of doubtful character; but if known to be contrary to the desires of both parties, or to the desires of the original authority in a distracted country, it becomes offensive and inadmissible, *unless obviously on the side of Human Rights*, when the act of intervention takes its character from the cause in which it is made. But it must not be forgotten, that, in the case of civil war, any mediation, or, indeed, any proposition not enjoining submission to the original authority, is in its nature adverse, for it assumes the separate existence of the other party, and secures for it temporary immunity and opportunity, if not independence. Congress, therefore, was

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right in declaring to foreign powers that any renewed effort of mediation in our affairs will be regarded as an unfriendly act.

There is another case of unarmed intervention which I cannot criticize. It is where a nation intercedes or interposes in favor of Human Rights, or to secure the overthrow of some enormous wrong, — as when Cromwell pleaded, with noble intercession, for the secluded Protestants of the Alpine valleys, when Great Britain and France declared sympathy with the Greeks struggling for independence, and when Great Britain alone, by splendid diplomacy, set herself against Slavery everywhere throughout the world.

The full lesson may be summed up briefly. All intervention in the internal affairs of another nation is contrary to law and reason, and can be vindicated only by overruling necessity. Intervening by war, then must there be the necessity of self-defence. Intervening by mediation or intercession, then must you be able to speak in behalf of civilization endangered or human nature wronged. To this humane policy no power is bound so absolutely as England; especially is none so fixed, beyond possibility of retreat or change, in hostility to Slavery, whatever shape this criminal pretension may assume, whether the animating principle of a nation, the "forced labor" of a multitude, or even the service of a solitary domestic.

III.

THERE is a species of foreign intervention which stands by itself and has its own illustrations. There-

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fore I speak of it by itself. It is where a foreign power undertakes to acknowledge the independence of a colony or province renouncing its original allegiance, and it may be compendiously called *Intervention by Recognition*. Recognition is strictly applicable only to the act of the original government, renouncing all claim of allegiance, and at last acknowledging the independence in dispute. It becomes an act of intervention, where a foreign government steps between the two parties. The original government is so far master of its position, that it may select its own time in making this recognition. But the question arises, At what time and under what circumstances can this recognition be made by a foreign power? It is obvious that a recognition proper at one time and under special circumstances would not be proper at another time and under different circumstances. Mr. Canning said, with reference to Spanish America, that, "if he piqued himself upon anything, it was upon the subject of *time*"; and he added, that there were two ways of proceeding, — "recklessly and with a hurried course to the object, which might be soon reached and almost as soon lost, or by another course so strictly guarded that no principle was violated and no strict offence given to other powers."[1] These are words of wise statesmanship, and they present the practical question occurring in every case of recognition: What condition of the controversy will justify such intervention?

Here again the whole matter is best explained by historic instances. The earliest is that of Switzerland, as long ago as 1307, breaking off from the House of

[1] Speech on the Address in Reply to the King's Speech, February 8, 1825: Hansard's Parliamentary Debates, 2d Ser., Vol. XII. col. 77, 78.

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Hapsburg, whose original cradle was a Swiss canton. But Austria did not acknowledge the independence of the Republic until the Peace of Westphalia, nearly three centuries and a half after the struggle began under William Tell. Meanwhile the cantons lived through the vicissitudes of war, foreign and domestic, and formed treaties with other powers, including the Pope. Before Swiss independence was acknowledged, the Dutch conflict began under William of Orange. Smarting from intolerable grievances, and with a price set upon the head of their illustrious Stadtholder, the United Provinces of the Netherlands, in 1581, renounced the tyrannical sovereignty of Philip the Second, and declared themselves independent. In the history of Freedom this is an important epoch. They were Protestants, battling for rights denied, and Queen Elizabeth of England, the head of Protestantism, acknowledged their independence, and shortly afterwards extended military aid. Nor did other powers stand aloof. In 1594, Scotland, Protestant also, under James the Sixth, afterwards the first James of England, treated with the insurgent Provinces as successors of the Houses of Burgundy and Austria, and in 1596 France entered into alliance with them. The contest continued, sustained on the side of Spain by the genius of Parma and Spinola, and on the side of the infant Republic by the youthful talent of Maurice, son of the great Stadtholder. But the claims of Spain were enduring; for it was not until the Peace of Westphalia, eighty years after the revolt, and nearly seventy years after their Declaration of Independence, that this power consented to Dutch independence. Nor do these examples stand alone, even at that early day. Portugal, unjustly subjugated by Spain in

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1580, broke away in 1640 and declared herself independent, under the Duke of Braganza as King. A year scarcely passed before Charles the First of England negotiated a treaty with the new sovereign. The contest had ceased, but not the claim; for it was only after twenty-eight years that Spain made this other recognition.

Traversing the Atlantic Ocean in space and more than a century in time, I come to the next historic instance, so interesting to us all, while as a precedent it dominates the whole question. The long discord between the Colonies and the mother country broke forth in blood on the 19th of April, 1775. Independence was declared on the 4th of July, 1776. Battles ensued, — Trenton, Princeton, Brandywine, Germantown, Saratoga, followed by the winter of Valley Forge. The contest was yet undecided, when, on the 6th of February, 1778, France entered into a treaty of amity and commerce with the United States, containing, among other things, a recognition of their independence, with mutual stipulations between the two parties to protect the commerce of the other, by convoy on the ocean, "against all attacks, force, and violence";[1] and on the 13th of March this treaty was communicated to the British Government by the French ambassador at London, with a diplomatic note, in which the United States are described as "in full possession of the independence pronounced by their Act of 4th July, 1776," and the British Government is warned that the King of France, "being determined effectually to protect the legitimate freedom of the commerce of his subjects and to maintain the honor of his flag, has taken in consequence some eventual measures

[1] Art. VI. VII.: United States Statutes at Large, Vol. VIII. p. 16.

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with the United States of North America."[1] A further treaty of alliance, whose declared object was the maintenance of the independence of the United States, had been signed on the same day, but this was not communicated; nor is there evidence that it was known to the British Government at the time. The communication of the other sufficed, for it was an open recognition of the new power, with promise of protection on the ocean, *while the war was yet flagrant between the two parties.* As such it must be regarded as an armed recognition, constituting in itself a belligerent act, aggravated and explained by the circumstances under which it was made, the warning, in the nature of menace, by which it was accompanied, the clandestine preparations by which it was preceded, and the corsairs to cruise against British commerce, which for some time had been allowed to swarm under the American flag from French ports. It was so accepted by the British Government. The British minister was summarily withdrawn from Paris, all French vessels in British harbors were seized, and on the 17th March a message from the King was brought down to Parliament in the nature of a declaration of war against France. In this declaration there was no allusion to anything but the treaty of amity and commerce officially communicated by the French ambassador, which was denounced by his Majesty as an "unprovoked and unjust aggression on the honor of his crown and the essential interests of his kingdoms, *contrary to the most solemn assurances, subversive of the Law of Nations, and injurious to the rights of every sovereign power in Europe.*" Only three days later, on the 20th March, the Commissioners of the United

[1] Martens, Causes Célèbres, Tom. III. pp. 171, 172.

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States were received by the King of France in solemn audience, with all the pomp and ceremony accorded by the Court of Versailles to the representatives of sovereign powers. War ensued between France and Great Britain on land and sea, in which Holland and Spain afterwards took part against Great Britain. With such allies, a just cause prevailed. Great Britain, by provisional articles, signed at Paris 30th November, 1782, acknowledged the United States "to be free, sovereign, and independent," and declared the boundaries thereof.

Colonial independence was contagious, and the contest for it presented another illustration, more discussed, and constituting a precedent, if possible, more interesting still. This was when the Spanish colonies in America, following the Northern example, broke away from the mother country and declared themselves independent. The contest began as early as 1810, but it was long continued, and extended over an immense region, — from New Mexico and California in the North to Cape Horn in the South, — washed by two vast oceans, traversed by mighty rivers, and buttressed by lofty mountains fruitful in silver, capped with snow, and shooting volcanic fire. At last the United States, satisfied that the ancient power of Spain had ceased to exist beyond reasonable chance of restoration, and that the contest was practically ended, acknowledged the independence of Mexico and five other provinces. This act was approached only after frequent debate in Congress, where Henry Clay took an eminent part, and after most careful consideration in the Cabinet, where John Quincy Adams, as Secretary of State, shed upon the question all the light of

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his unsurpassed knowledge, derived from long practice as well as from laborious study of International Law. This judgment must be regarded as a sufficient authority. President Monroe, in a special message, on the 8th of March, 1822, twelve years after the war began, called the attention of Congress to the state of the contest, which he said had "now reached such a stage, and been attended with such decisive success on the part of the provinces, that it merits the most profound consideration whether their right to the rank of independent nations, with all the advantages incident to it in their intercourse with the United States, is not complete." After setting forth the *de facto* condition of things, he proceeded: "Thus it is manifest that all those provinces are not only in the full enjoyment of their independence, but, *considering the state of the war and other circumstances, that there is not the most remote prospect of their being deprived of it.*" In proposing their recognition, the President declared that it was done "under a thorough conviction that it is in strict accord with the Law of Nations"; and further, that "it is not contemplated to change thereby, in the slightest manner, our friendly relations with either of the parties." In accordance with this recommendation, Congress authorized the recognition. Three years later the same thing was done by Great Britain, after much debate, diplomatic and Parliamentary. No case of international duty has been illustrated by a clearer eloquence, an ampler knowledge, or a purer wisdom. The despatches were written by Mr. Canning, and upheld by him in Parliament; but Lord Liverpool took part in the discussion, succinctly declaring "that there could be no right to recognition while the contest

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was actually going on,"[1] — a conclusion cautiously, but strongly, enforced by Lord Lansdowne, and nobly vindicated, in an oration reviewing the whole subject, by that great publicist, Sir James Mackintosh. All inclined to recognition, but admitted that it could not take place *so long as the contest continued,* — and that there must be "such a contest as exhibits some equality of force, and of which, if the combatants were left to themselves, the issue would be in some degree doubtful." The Spanish strength throughout the whole continent was reduced to a single castle in Mexico, an island on the coast of Chile, and a small army in Upper Peru, while in Buenos Ayres no Spanish soldier had set foot for fourteen years. "Is this a contest," said Mackintosh, "approaching to equality? Is it sufficient to render the independence of such a country doubtful? Does it deserve the name of a contest?"[2] It was not until 1825 that Great Britain was so far satisfied as to acknowledge this independence. France followed in 1830, and Castilian pride relaxed in 1836, twenty-six years from the first date of the contest.

The next instance is Greece, which declared independence January 27, 1822. After a cruel contest of more than five years, with alternate success and disaster, the great powers intervened forcibly in 1827; but the final recognition was postponed till May, 1832. Then came the instance of Belgium, which declared independence in November, 1830, and was promptly recognized by the great powers intervening for this purpose. The last instance is Texas, which declared independence in De-

[1] Speech in the House of Lords, March 15, 1824: Hansard's Parliamentary Debates, 2d Ser., Vol. X. col. 999.

[2] Speech in the House of Commons, June 15, 1824: Miscellaneous Works (London, 1846), Vol. III. pp. 462, 468.

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cember, 1835, and defeated the Mexican army under Santa Aña, making him prisoner, in 1836. The power of Mexico seemed to be overthrown; but Andrew Jackson, then President of the United States, in his Message of December 21, 1836, laid down the rule of caution and justice, as follows: "The acknowledgment of a new state as independent and entitled to a place in the Family of Nations is at all times an act of great delicacy and responsibility, but more especially so when such state has forcibly separated itself from another, of which it had formed an integral part, and which still claims dominion over it. *A premature recognition* under these circumstances, *if not looked upon as justifiable cause of war*, is always liable to be regarded as a proof of an unfriendly spirit." And he concluded by proposing that our country should "stand aloof" until the question was decided "beyond cavil or dispute." During the next year, when the contest had practically ceased and only the claim remained, this new power was acknowledged by the United States, who were followed in 1839 by France, and in 1840 by Great Britain, Holland, and Belgium. Texas was annexed to the United States in 1845; but at this time Mexico had not joined in the general recognition.

Such are historic instances illustrating Intervention by Recognition. As in other cases of intervention, the recognition may be *armed* or *unarmed*, with an intermediate case, where the recognition may seem unarmed, when in reality it is armed, — as when France simply announced recognition of the independence of the United States and at the same time prepared to maintain it by war.

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Armed recognition is simply *Recognition by Coercion.* It is a belligerent act, constituting war, and can be vindicated only as war. No nation will undertake it, unless ready to assume all the responsibilities of war, — as in the recent cases of Greece and Belgium, not to mention the recognition of the United States by France. But an attempt, under guise of recognition, to coerce the dismemberment or partition of a country is in its nature offensive beyond ordinary war, especially when the country to be sacrificed is a republic, and the plotters against it are crowned heads. Proceeding from the consciousness of brute power, such an attempt is an insult to mankind. If armed recognition at any time can find apology, it is only *where sincerely made for the protection of Human Rights.* It would be hard to condemn that intervention which saved Greece to Freedom.

Unarmed recognition is where a foreign power acknowledges in some pacific form the independence of a colony or province against the claim of its original government. Although excluding all idea of *coercion,* yet it cannot be uniformly justified.

Here we are brought to that question of "time," on which Mr. Canning so pointedly piqued himself, and to which President Jackson referred, when he suggested that "a premature recognition" might be "looked upon as justifiable cause of war." Nothing is more clear than that recognition may be favored at one time, while it must be rejected at another. So far as it assumes to determine rights instead of facts, or to anticipate the result of a contest, it is wrongful. No nation can undertake to sit in judgment on the rights of another na-

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tion without its consent. Therefore it cannot declare that *de jure* a colony or province is *entitled* to independence, but, from the necessity of the case, and that international intercourse may not fail, it must ascertain the facts, carefully and wisely, and, on the actual evidence, it may declare that *de facto* the colony or province appears *to be in possession* of independence, — which means, first, that the original government is dispossessed beyond the possibility of recovery, and, secondly, that the new government has achieved a reasonable stability, with fixed limits, giving assurance of solid power. All this is simply fact and nothing more. But just in proportion as a foreign nation anticipates the fact, or imagines the fact, or substitutes its own passions for the fact, it transcends the well-defined bounds of International Law. Without the fact of independence, positive and fixed, there is nothing but a claim. Now nothing is clearer than, that, while the terrible litigation is still pending, and the trial by battle, to which appeal is made, remains undecided, *the fact of independence cannot exist.* There is only a paper independence, which, though reddened with blood, is no better than a paper empire or a paper blockade; and any pretended recognition of it is a wrongful intervention, inconsistent with just neutrality, since the obvious effect must be to encourage the insurgent party. Such has been the declared judgment of our country, and its practice, even under circumstances tempting in another direction; and such, also, was the declared judgment and practice of Great Britain with reference to Spanish America.

The conclusion, then, is clear. To justify recognition, it must appear beyond doubt that *de facto* the

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contest is finished, and that *de facto* the new government is established secure within fixed limits. *These are conditions precedent,* not to be avoided without open offence to a friendly power, and open violation of that International Law which is the guardian of the world's peace, even if there be not *another condition precedent* which civilization in this age will require.

Do you ask now if foreign powers can acknowledge our Rebel embryo as an independent nation? There is madness in the thought. Recognition accompanied by the breaking of the blockade would be war, impious war, against the United States, where Slavemongers would be the allies and Slavery the inspiration. Of all wars in history, none more accursed, none more sure to draw down upon its authors the judgment alike of God and man. But the thought of recognition, under existing circumstances, while the contest is still pending, even without any breaking of the blockade or attempted coercion, is a Satanic absurdity, hardly less impious than the other. It would assume unblushingly, that, already Rebel Slavery had succeeded in establishing an independent nation with an untroubled government and a secure conformation of territory, when, *in fact,* nothing is established, nothing untroubled, nothing secure, not even a single boundary-line, and there is no element of independence except the audacious attempt, — when, *in fact,* the conflict is still waged on numerous battle-fields, and these pretenders to independence have been driven from State to State, driven away from the Mississippi which parts them, driven back from the sea which surrounds them, and shut up in the interior or in block-

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aded ports, so that only by stealth can they communicate with the outward world. Any recognition of such a pretension, existing only as pretension, scouted and denied by a whole people with invincible armies and navies embattled against it, would be a mockery of truth. It would assert independence as *a fact*, when notoriously it was not *a fact*. It would be an enormous lie. Naturally a power thus guilty would expect to support the lie by arms.

IV.

I DO not content myself with a single objection to this outrageous consummation. There is another, of a different nature. Assuming, for the moment, what I glory to believe can never happen, that the *new* Slave Power has become independent *in fact*, while the national flag has sunk away exhausted in the contest, there is one objection which, in an age of Christian light, thank God, cannot be overcome, unless, after solemn covenants branding Slavery, the great powers shall forget their vows, while England, the declared protectress of the African race, and France, the declared champion of "ideas," both break away from the irresistible logic of their history, and turn their backs upon the past. Vain is honor, vain is human confidence, if these nations, at a moment of high duty, can thus ignobly fail. "Renown and grace is dead." Like the other objection, this is *of fact* also, — for it is founded on the character of the pretension claiming recognition, which constitutes *fact*. Perhaps it may be said that it is a question of policy; but it is of policy which

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ought to be beyond debate, *if such fact be established.* Something more is necessary than that the new power shall be *de facto* independent. *De facto* it must be *fit* for independence; and, from the nature of the case, every nation will judge of this fitness *in fact.* Undertaking to acknowledge a *new* power, you proclaim its fitness for welcome and association in the Family of Nations. Can England gazette such a proclamation, elevating the whippers of women and sellers of children? Can France permit Louis Napoleon to do the same?

Here, on the threshold of this inquiry, the true state of the question must not be forgotten. It is not whether old and existing relations shall be continued with a power permitting Slavery, but *whether relations shall be commenced with a new power,* not merely permitting Slavery, but building its whole intolerable pretension upon this Barbarism. "No *new* Slave State" is a watchword with which we are familiar in our domestic history; but even such cry does not reveal the full opposition to the *new* revolt against Civilization, — for, even if disposed to admit a *new* Slave State, there must be, among men who have not yet lost all sense of decency, undying resistance to the admission of a *new* Slave Power with such an unquestioned origin and such an unquestioned purpose as that which now flaunts in piracy and blood before the civilized world, seeking recognition for its criminal chimera. Here is nothing for nice casuistry. Duty is plain as the moral law or the multiplication table.

Look for a moment at the unprecedented character of this pretension. A President known to be against the extension of Slavery was duly elected by the peo-

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ple in the autumn of 1860. This was all. He had not entered upon his duties. But the apostolic Slavemongers saw that Slavery at home must suffer under the popular judgment against its extension; they saw that a vote against its extension was a vote for its condemnation; and they rebelled. Under this wicked inspiration, State after State pretended to withdraw from the Union, and to construct a new Confederacy, whose "corner-stone" was Slavery. A Constitution was adopted, declaring these words: (1.) "No law denying or impairing the right of property in negro slaves shall be passed"[1]; and (2.) "In all territory belonging to the Confederate States, lying without the limits of the several States, the institution of Negro Slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the Territorial Government."[2] Do not start. These are the authentic words of the text. You will find them in the Rebel Constitution.

Such was the unalterable fabric of the new government. Nor was there any doubt or hesitation in proclaiming its distinctive character. Its Vice-President, Mr. Stephens, thus far remarked for moderation on Slavery, as if smitten with diabolic light, undertook to explain and vindicate the new Magna Charta. His words are familiar, but they cannot be omitted in a complete statement of the case. "*The new Constitution*," he said, "has put at rest *forever* all the agitating questions relating to our peculiar institution, African Slavery, as it exists among us," which he proceeds to declare "was the immediate cause of the late rupture and present revolution." The Vice-President an-

[1] Art. I. sec. 9. [2] Art. IV. sec. 3.

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nounced unequivocally the change that had taken place. Admitting it was "the prevailing idea of most of the leading statesmen at the time of the formation of the old Constitution that the enslavement of the African was in violation of the Laws of Nature, that it was wrong in principle, socially, morally, and politically," he denounces this idea as "fundamentally wrong," and proclaims the new government "founded upon *exactly the opposite idea.*" Here is no disguise. "Its foundations," he avows, "are laid, its *corner-stone* rests, upon the great truth that the negro is not equal to the white man, — that Slavery, subordination to the superior race, is his natural and normal condition." Not content with exhibiting the untried foundation, he boastfully claims for the new government priority of invention. "*This our new government,*" he vaunts, "*is the first in the history of the world* based upon this great physical, philosophical, and moral truth. . . . . This stone, which was rejected by the first builders, 'is become the chief stone of the corner.'" And then, as if priority of invention were not enough, he proceeds to claim for the new government future supremacy, saying that it is already "the nucleus of a growing power, which, if we are true to ourselves, our destiny, and our high mission, will become the controlling power on this continent." [1]

Since Satan first declared the "corner-stone" of his new government, and openly denounced the Almighty Throne, there has been no blasphemy of equal audacity. In human history nothing but itself can be its parallel.

[1] Speech at Savannah, March 21, 1861: Rebellion Record, Vol. I., Diary, p. 19, Doc. 48. See, also, A Constitutional View of the Late War between the States, by Alexander H. Stephens, Vol. II. pp. 85, 521, 522.

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The gauntlet is thrown down to heaven and earth, while a disgusting Barbarism is proclaimed as the new Civilization. Here is a new method, a *novum organum*, to usher in the world's future. Two years are already passed, — but, as the Rebellion began, so is it now. A Governor of South Carolina, in a message to the Legislature, as late as 3d April, 1863, takes up the boastful strain, and congratulates the Rebel Slavemongers that they are "a refined, cultivated, and enlightened people," and that the new government is "the finest type that the world ever beheld."[1] God save the mark! Such, doubtless, was the speech of the African tyrant, as he sat in state on the prostrate bodies of his subjects and rejoiced in this manifestation of power. A leading journal, more than any other the organ of the Slavemongers, repeats the original vaunt with more than the original brutality. After dwelling on "the grand career and lofty destiny" before the new government, the "Richmond Examiner" of 28th May, 1863, proceeds as follows. "Would that all of us understood and laid to heart the true nature of that career and that destiny, and the responsibility it imposes. *The establishment of the Confederacy is, verily, a distinct reaction against the whole course of the mistaken civilization of the age.* For Liberty, Equality, and Fraternity we have deliberately substituted Slavery, Subordination, and Government. *Reverently we feel that our Confederacy is a God-sent missionary to the nations, with great truths to preach.* We must speak thus boldly; but 'whoso hath ears to hear, let him hear.'" This God-sent missionary to the nations it is now proposed to welcome at the household hearth of the civilized world.

[1] Message of Governor Bonham: Rebellion Record, Vol. VI. Doc. 157.

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Unhappily, there are old nations already in the family still tolerating Slavery; but now, for the first time, a new nation claims admission there, which not only tolerates Slavery, but, exulting in its shame, strives to reverse the judgment of mankind, making this outrage its chief support and glory, so that all recognition of the new power will be recognition of a sacrilegious pretension,

"With one vast blood-stone for the mighty base."

Elsewhere Slavery has been an accident; here it is the principal. Elsewhere it has been an instrument only; here it is the inspiration. Elsewhere it has been kept back in becoming modesty; here it is pushed forward in all its brutish nakedness. Elsewhere it has claimed nothing but liberty to live; here it claims license to rule, with unbounded empire at home and abroad. Look at this candidate power in its whole continued existence, from Alpha to Omega, and it is nothing but Slavery. Its origin is Slavery, its mainspring is Slavery, its object is Slavery. Wherever it appears, whatever it does, whatever form it takes, it is Slavery and nothing else; so that, with the agonizing despair of Satan, it might cry out: —

"Me miserable! which way shall I fly
Infinite wrath and infinite despair?
Which way I fly is Hell; *myself am Hell.*"

The Rebellion is Slavery in arms, Slavery on horseback, Slavery on foot, Slavery raging on the battle-field, Slavery savage on the quarter-deck, robbing, destroying, burning, killing, to uphold this candidate power. Its legislation is simply Slavery in statutes, Slavery in chapters, Slavery in sections, with an enacting clause.

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Its diplomacy is Slavery in pretended ambassadors, Slavery in cunning letters, Slavery in cozening promises, Slavery in persistent negotiation, — all to secure for the candidate power its much desired welcome. Say what you will, try to avoid it, if you can, you are compelled to admit that the candidate power is nothing else than *organized Slavery*, now, in its madness, surrounded by its criminal clan, and led by its felon chieftains, braving the civilization of the age. Any recognition of Slavery is bad enough; but this will be recognition with welcome and benediction, imparting *new* consideration and respectability, and, worse still, securing *new* opportunity and foothold for the supremacy it openly proclaims.

In ancient days the candidate was robed in white, while at the Capitol and in the Forum he canvassed the people for their votes. The candidate nation, unashamed of Slavery, should be robed in black, while it conducts the great canvass, and asks the votes of the Christian powers. "Hung be the heavens with black, yield day to night," as the outrage proceeds; for the candidate gravely asks international recognition of the claim to hold property in man, to sell wife away from husband, to sell child away from parent, to shut the gates of knowledge, to appropriate all the fruits of another's labor. The candidate proceeds in the canvass, notwithstanding all history declares Slavery essentially barbarous, and that whatever it touches it changes to itself, — that it barbarizes laws, barbarizes business, barbarizes manners, barbarizes social life, and makes the people who cherish it barbarians. And still the candidate proceeds, although it is known to the Christian powers that the partisans of Slavery are natu-

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rally "filibusters," always apt for lawless incursion and for robbery; that, during later years, under their instigation and to advance their pretensions, expeditions *identical in motive with the present Rebellion* were let loose in the Gulf of Mexico, twice against Cuba, and twice, also, against Nicaragua, breaking the peace of the United States and threatening the repose of the world, so that Lopez and Walker were but predecessors of Beauregard and Jefferson Davis. And yet the candidate proceeds, although it is obvious that the recognition urged will be nothing less than solemn sanction by the Christian powers of Slavery everywhere throughout the new jurisdiction, on land or sea, so that every ship, being part of *the floating territory*, will be *Slave Territory*. And yet, with the phantasy that man can hold property in man shooting from his lips, with the shackle and lash in his hands, with barbarism on his forehead, with filibusterism in his recorded life, and with Slavery woven in his flag wherever it floats on land and sea, the candidate clamors for independent recognition. It is sad to think that there is delay in repelling the insufferable canvass. Can Christian nations longer hesitate? To detest and combat such an accursed pretension it is not necessary even to be a Christian, — it is sufficient to be a man.

If the recognition of a *de facto* power were a duty imposed upon other nations by International Law, there would be no opportunity for objections founded on principle or policy. *But there is no such duty.* International Law leaves to each nation, precisely as the Municipal Law leaves to each citizen, what company to keep or what copartnership to form. No company and no co-

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partnership can be forced upon a nation. It is all a question of free choice and acceptance. International Law on this head is like the Constitution of the United States, which declares, "New States *may be admitted* by the Congress into this Union." Not *must*, but *may*, — it being in the discretion of Congress to determine whether the State shall be admitted. Accordingly, in the exercise of this discretion, Congress for a long time refused to admit Missouri *as a Slave State*. And now the old Missouri Question, in more outrageous form, on vaster theatre, with "monarchs to behold the swelling scene," is presented to the Christian powers of the world. If it was right to exclude Missouri, having only few slaves, and regarding Slavery merely as a temporary condition, it must be right to exclude a pretended nation, which not only boasts millions of slaves, but passionately proclaims the perpetuity and propagation of Slavery as the cause and object of its separate existence.

Practical statesmen have always treated recognition as a question of policy, to be determined on the whole case, even where the power is *de facto* established, — as amply appears in the Parliamentary debates on the recognition of Spanish America. If we go behind the practical statesmen and consult the earliest oracles of International Law, we find, that, according to their most approved utterances, not only may recognition be refused, but there are considerations of duty this way which cannot be evaded. It is not enough that a pretender has the form of a commonwealth. "A people," says Cicero, in a definition copied by most jurists, "is not every body of men, *howsoever* congregated, but a gathered multitude *associated through agreement in right*

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and community of interest."[1] Again, he goes so far as to say, "When the king is unjust, or the aristocracy, or the people itself, the commonwealth is not vicious, *but null.*"[2] Of course a commonwealth that is *null* cannot be recognized. This same lofty standard is of frequent recurrence in the testimony of the great Roman. But he is not alone. Grotius, who speaks always with the magistral voice of learning and genius, furnishes the just conclusion, when, after declaring that a state is "a complete body of freemen associated for the enjoyment of right and for their common benefit,"[3] he exposes the distinction between a body of men, who, being already a recognized commonwealth, are guilty of systematic crime, — as, for instance, piracy, — and another body of men, who, *not yet recognized as a commonwealth*, band together for this purpose, — *sceleris causâ coeunt.* The latter, by happy discrimination, he places beyond the pale of recognition.[4] When before, in all history, have creatures wearing the human form proclaimed the *criminal principle* of their association with the audacity of our Slavemongers? And yet there is hesitation to place them beyond the pale of recognition. A recent English authority on the Law of Nations adopts the same distinction. I quote Mr. Phillimore, who, after alluding to societies united *for the sake of crime*, says: "All agree to class such bodies amongst those of whose corporate existence the law takes no cognizance *(qui civitatem non faciunt)*, and

[1] "Juris consensu et utilitatis communione sociatus." — *De Republica*, Lib. I. c. 25.

[2] De Republica, cited by Augustine, De Civitate Dei, Lib. II. cap. xxi. § 2. See also De Republica, Lib. III. c. 31.

[3] De Jure Belli ac Pacis, Lib. I. Cap. I. § xiv. 1.

[4] Ibid., Lib. III. Cap. III. § ii. 1, 3.

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therefore as not entitled to international rights either in peace or war."[1]

It might be argued, on grounds of reason and authority even, that the *declared principle* of the pretended power was a violation of International Law. Eminent magistrates have solemnly ruled, that, in the development of civilization, the Slave-Trade has become illegal by a law higher than any statute. Sir William Grant, an ornament of the British bench, whose elegant mind was governed always by practical sense, adjudged that this trade "cannot, *abstractedly speaking*, be said to have a legitimate existence";[2] and our own great authority, Mr. Justice Story, in a remarkable judgment, declared himself constrained "to consider the trade *an offence against the universal law of society*";[3] and the highest professional authorities of our country adopted the same conclusion: I refer especially to the late William Pinkney and Jeremiah Mason.[4] But arguments which are strong against any recognition of the Slave-Trade are strong also against any recognition of Slavery itself, especially when it is the foundation of a *new* power.

In the determination of present duty, it is not necessary to assume that Slavery or the Slave-Trade is positively forbidden by existing International Law. It is enough to show, that, *according to the spirit* of that sovereign law which "sits empress, crowning good, repressing ill," and also according to those commanding principles of justice and humanity which cannot be set at nought without shock to human nature itself, so foul

[1] International Law, Vol. I. p. 79.
[2] Amedie, 1 Acton, R., 250.
[3] La Jeune Eugénie, 2 Mason, R., 451.
[4] Life and Letters of Joseph Story, Vol. I. pp. 357, 359.

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a wrong as Slavery can receive no voluntary support from the Commonwealth of Nations. It is not a question of Law, but of Morality. The Rule of Law is sometimes less comprehensive than the Rule of Morality, so that the latter may positively condemn what the former silently tolerates. But within its own domain Morality cannot be less authoritative than Law. It is, indeed, nothing less than the Law of Nature, which is the Law of God. If we listen again to heathen teaching, we shall confess its truth. "Law," says Cicero, "is the highest reason, implanted in nature, *which prescribes those things which ought to be done, and forbids the contrary.*"[1] This law is an essential part of International Law, as is also Christianity itself, and where treaties fail and usage is silent it is the only law between nations. Jurists of all ages and countries have delighted to acknowledge its authority, if it spoke only in the still, small voice of conscience. A celebrated professor of Germany in our own day, Savigny, whose name is honored by students of jurisprudence everywhere, touches upon this monitor of nations, when he declares that "there may exist between different nations *a common consciousness of right* similar to that which engenders the positive law of particular nations."[2] This common consciousness of right is identical with that law, which, according to Cicero, is "the highest reason, implanted in nature." Such is the *Rule of Morality.*

The Rule of Morality differs from the Rule of Law in this respect, — that the former finds support in the human conscience, the latter in the sanctions of public

[1] "Lex est ratio summa, insita in natura, quæ jubet ea quæ facienda sunt, prohibetque contraria." — *De Legibus*, Lib. I. c. 6.

[2] System des heutigen Römischen Rechts, B. I. c. 2, § 11.

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force. But moral power prevails with a good man as much as if it were physical. I know no different rule for a good nation than for a good man. I am sure that a good nation will not do what a good man would scorn to do.

There is a Rule of Prudence superadded to the Rule of Morality. Grotius, in discussing treaties, does not forget the wisdom of Solomon, who, in not a few places, warns against fellowship with the wicked, — although he adds, that these are maxims of prudence, and not of law.[1] And he reminds us of the saying of Alexander, "that those grievously offend who enter the service of barbarians."[2] Better still are the words of the wise historian of classical antiquity, who enjoins upon a commonwealth the duty of considering carefully, when sued for assistance, "whether what is sought is sufficiently pious, safe, glorious, or whether it is *unbecoming*";[3] and also those words of the Hebrew king, who, after rebuking an alliance with Ahab, asks with scorn, "Shouldest thou help the ungodly?"[4]

The claim for recognition, when brought to the touchstone of these principles, is easily disposed of.

Urge not *the Practice of Nations* in its behalf. Never before in history has a candidacy been put forward *in the name of Slavery*, and the terrible outrage is aggravated by the Christian light which surrounds it. This is not an age of darkness. But even in the Dark Ages, when the Slavemongers of the Barbary coast had gath-

[1] De Jure Belli ac Pacis, Lib. II. Cap. XV. § ix. 10.
[2] Ibid., § xi. 8.
[3] Sallust, Fragm., Lib. IV.: *Rex Mithridates Regi Arsaci.*
[4] 2 Chron., xix. 2.

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ered into cities, the saintly Louis the Ninth was fired to treat one of these communities as a "nest of wasps."[1] Afterwards, but slowly, they obtained "the right of legation" and "the reputation of a government"; when at last, weary of their criminal pretensions, the aroused vengeance of Great Britain and France blotted out this power from the list of nations. Louis the Eleventh, who has been described as the sovereign "who best understood his interest," indignant at Richard the Third of England, who had murdered two infants in the Tower and usurped the crown, sent back his ambassadors without holding intercourse with them. This is a suggestive precedent, which I give on venerable authority in diplomatic history;[2] but the parricide usurper of England had never murdered so many infants or usurped so much as the pretended Slave Power, strangely tolerated by the sagacious sovereign who sits on the throne of Louis the Eleventh.

It is not necessary, however, to go so far in history, nor to dwell on the practice of nations in withholding or conceding recognition. The whole matter is stated by Burke, with his customary power.

"In the case of a divided kingdom, by the Law of Nations, Great Britain, like every other power, is free to take any part she pleases. *She may decline, with more or less formality, according to her discretion, to acknowledge this new system;* or she may recognize it as a government *de facto*, setting aside all discussion of its original legality, and considering the ancient monarchy as at an end. The Law of Nations leaves our court open to its choice. . . . . The declaration of a *new*

[1] Molloy, De Jure Maritimo et Navali (6th edit.), Book I. ch. 4, § 4. Phillimore, International Law, Vol. I. p. 80.

[2] Wicquefort, L'Ambassadeur et ses Fonctions, Liv. I. sec. 8.

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species of government on new principles is a real crisis in the politics of Europe."[1]

This same rule Burke declared in Parliament, saying, "that the French Republic was *sui generis*, and bore no analogy to any other that ever existed in the world. It, therefore, did not follow that we ought to recognize it, merely because different powers in Europe had recognized the Republic of England under Oliver Cromwell."[2] And in his famous "Appeal from the New to the Old Whigs" this illustrious authority proclaimed the new French Government "so fundamentally wrong as to be utterly incapable of correcting itself by any length of time, or of being formed into any mode of polity of which a member of the House of Commons could publicly declare his approbation."[3]

Another eloquent publicist, Sir James Mackintosh, while pressing on Parliament the recognition of Spanish America, says: "The reception of a new state into the society of civilized nations by those acts which amount to recognition is a proceeding which has no legal character, and *is purely of a moral nature*"; and he proceeds to argue, that, since England "is the only anciently free state in the world, for her to refuse her *moral aid to communities struggling for liberty* is an act of unnatural harshness."[4] Thus does he vindicate recognition for the sake of Freedom. How truly he would have repelled any recognition for the sake of Slavery let his life testify.

[1] Thoughts on French Affairs, 1791: Works (London, 1801), Vol. VII. pp. 11, 12.

[2] Speech on the Address of Thanks, December 14, 1792: Hansard's Parliamentary History, Vol. XXX. col. 72.

[3] Works, Vol. VI. p. 86.

[4] Miscellaneous Works (London, 1846), Vol. III pp. 476, 477.

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At the Congress of Verona, Chateaubriand, as representative of France, replied to a proposition from the Duke of Wellington on this subject: —

"France is influenced by considerations of more general importance with regard to the governments *de facto*. She conceives that *the principles of justice on which society is founded must not be lightly sacrificed* to secondary interests, and it appears to her that those principles increase in importance *when the matter in question is that of recognizing a political order of things virtually hostile to that which exists in Europe.*" [1]

Here the rule is mildly stated, but in harmony with correct principle. A *new* government, with Slavery as its active soul, must be "virtually hostile" to European civilization, so as to make its recognition impossible; nor can the principles of justice be lightly sacrificed.

No better testimony to the practice of nations can be found than the words of Vattel, whose work, presenting the subject in familiar form, has done more, during the last century, to fashion opinion on the Law of Nations than any other authority. Here it is briefly.

"If there be any nation that *makes an open profession* of trampling justice under foot, of despising and violating the rights of others, whenever it finds an opportunity, the interest of human society will authorize all others to unite in order to humble and chastise it." [2]

"*To form and support an unjust pretension* is to do an injury only to the nation whom such pretension concerns; to mock at justice in general is to injure all nations." [3]

[1] Note Verbale en Réponse au Memorandum sur les Colonies Espagnoles en Amérique du 24 Novembre, 1822: Congrès de Vérone (2me édit.), Tom. I. p. 93.

[2] Le Droit des Gens, Liv. II. ch. 5, § 70.

[3] Ibid.

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"The power that assists an odious tyrant, that declares for an unjust and rebellious people, undoubtedly violates duty."[1]

"As to those monsters who under the title of sovereigns render themselves the scourges and horror of humanity, they are ferocious beasts, of whom every brave man may justly clear the earth."[2]

"If the maxims of a religion tend to establish it by violence, and to oppress all those who do not embrace it, the Law of Nature forbids us to favor that religion, or to unite unnecessarily with its inhuman followers, and the common safety of mankind invites them rather to enter into *a league against such madmen, to repress such fanatics, who disturb the public repose and menace all nations.*"[3]

Nor can you urge this recognition on any principle of *Comity of Nations.* This is an expansive term, into which enters much of the refinements, amenities, and hospitalities of civilization, and also something of the obligations of moral duty. But where an act is prejudicial to national interests, or contrary to national policy, or questionable in morals, it cannot be commended by any consideration of courtesy. A paramount duty must not be betrayed by a kiss. For the sake of comity, acts of good-will and friendship not required by law are performed between nations; but an English court has authoritatively declared that this principle cannot prevail, "where it violates the law of our own country, the Law of Nature, or the Law of God," and on this exalted ground it was decided that an American slave who had found shelter on board a British man-of-war

[1] Le Droit des Gens, Liv. II. ch. 4, § 56.
[2] Ibid.
[3] Ibid., ch. 12, § 162.

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on the high seas could not be recognized as a slave.[1] The same principle must prevail against recognition of a new slave nation.

Nor, finally, can this recognition be urged on any reason of *Peace*. There can be no peace founded on injustice; and any recognition is injustice which will cry aloud, resounding through the earth. You may seem to have peace, but it will be only smothered war, sure to break forth in war more direful than before.

Thus is every argument for recognition repelled, whether under the sounding words, Practice of Nations, Comity of Nations, or Peace. There is nothing in practice, nothing in comity, nothing in peace, which is not against any such shameful acknowledgment.

Applying the principles already set forth, — assuming what cannot be denied, that every power is free to refuse recognition, — assuming that it is not every body of men that can be considered a commonwealth, but only those "associated *through agreement in right and community of interest*," — that men "banding together for the sake of systematic crime" cannot be considered a commonwealth, — assuming that every member of the Family of Nations will surely obey the rule of morality, — that it will "shun fellowship with the wicked," — that it will not "enter the service of barbarians," — that it will avoid what is "unbecoming," and do that only which is "pious, safe, and glorious," — and that, above all things, it will not enter into alliance to "help the ungodly," — assuming these things, every such member must reject with indignation a new pretension whose declared principle of association is so intrinsically

[1] Forbes v. Cochrane et al, 2 Barnwall and Creswell, R., 448, 471.

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wicked. Here there can be no question. The case is plain; nor is any language of contumely or scorn too strong to express the irrepressible repugnance to such a pretension, which, like vice, "to be hated needs but to be seen." Surely there can be no Christian power which will not rouse to expose it, crying, with irresistible voice, —

No *new* sanction of Slavery!

No *new* quickening of Slavery in its active and aggressive barbarism!

No *new* encouragement to "filibusters" engendered by Slavery!

No *new* creation of *Slave Territory!*

No *new* creation of a *Slave Navy!*

No new Slave Nation!

No installation of Slavery as a *new* Civilization!

But all this litany will fail, if recognition succeeds, — from which, good Lord, deliver us! Nor will this be the end.

Slavery, through the *new* power, will take its place in the Parliament of mankind, with the immunities of an independent nation, ready always to uphold and advance itself, and organized as an unrelenting Propaganda of the new faith. A power having its inspiration in such a Barbarism must be essentially barbarous; founded on the asserted right to whip women and sell children, it must assume a character of disgusting hardihood; and openly professing determination to revolutionize the public opinion of the world, it must be in open schism with Civilization itself, so that all its influences will be wild, savage, brutal, and all its offspring kindred in character.

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"Pards gender pards; from tigers tigers spring;
No doves are hatched beneath a vulture's wing."[1]

Such a power, from very nature, must be despotism at home "tempered only by assassination," with the cotton-field for its Siberia, — while abroad it must be aggressive, dangerous, and revolting, in itself a *Magnum Latrocinium*, whose fellowship can have nothing but "the filthiness of evil," and whose very existence will be an intolerable nuisance. When Dante, in the vindictive judgment hurled against his own Florence, called it *bordello*, he did not use a term too strong for the mighty house of ill-fame which the Christian powers are now asked for the first time to license. Such must be the character of the new power. But, though only a recent wrong, and pleading no prescription, the illimitable audacity of its nature can hesitate at nothing; nor is there anything offensive or detestable it will not absorb into itself. It will be an Ishmael, with hand against every man. It will be a brood of Harpies, defiling all it cannot steal. It will be the one-eyed Cyclop of nations, seeing only through Slavery, spurning all as fools who do not see likewise, and bellowing forth in savage egotism, —

"Know, then, we Cyclops are *a race above*
Those air-bred people and their goat-nursed Jove;
And learn our power proceeds with thee and thine
Not as he wills, *but as ourselves incline*."[2]

Or it will be the Læstrygonian cannibal, with Slavery a perpetual maw, and terrible to the civilized world as that distant power to the companions of Ulysses, when, according to Homer,

[1] Wilkie, The Epigoniad, Book I. 403, 404.
[2] Odyssey, tr. Pope, Book IX. 329–332.

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"One for his food the raging glutton slew."[1]

Or, worse still, it will be the soulless monster of Frankenstein, the wretched creation of human science without God, — endowed with life and nothing else, forever raging madly, the scandal to humanity, powerful only for evil, whose destruction will be essential to the peace of the world.

Who can welcome such a creation? Who can consort with it? There is something loathsome in the idea. There is contamination even in the thought. If you live with the lame, says the ancient proverb, you will learn to limp; if you keep in the kitchen, you will smell of smoke; if you touch pitch, you will be defiled. But what limp so mean as that of this pretended power? what smoke so foul as its breath? what pitch so defiling as its touch? It is an Oriental saying, that a cistern of rosewater will become impure, if a dog be dropped into it; but an ocean of rosewater with Rebel Slavemongers would be changed into a vulgar puddle. Imagine whatever is most disgusting, and this pretended power is more disgusting still. Naturalists report that the pike will swallow anything except the toad, but this it cannot do. The experiment has been tried, and though this fish, in unhesitating voracity, always gulps whatever is thrown to it, yet invariably it spews the nuisance from its throat. Our Slavemonger pretension is worse than toad; and yet there are foreign nations

[1] Odyssey, tr. Pope, Book X. 133.

Other verses, by Richard Owen Cambridge, the satirist, and contemporary of Dr. Johnson, picture this Slavemonger Government: —

"Polypheme was a cannibal,
And most voracious glutton;
Poor shipwrecked tars he smoused for fish,
And munched marines for mutton."

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which, instead of spewing it forth, are already turning it like a precious morsel on the tongue.

There is yet another ground on which I make this appeal. It is part of the triumphs of Civilization, that no nation can act for itself alone. Whatever it does for good or for evil affects all the rest. Therefore a nation cannot forget its obligations to others. Especially does International Law, when it declares the absolute equality of independent nations, cast upon all the duty of considering well how this privilege shall be bestowed so that the welfare of all may be best upheld. But the whole Family of Nations would be degraded by admitting this new pretension to any toleration, much more to equality. There can be no reason for such admission; for it can bring nothing to the general weal. Civil society is created for safety and tranquillity. Nations come together and fraternize for the common good. But this hateful pretension can do nothing but evil for civil society at home or for nations in their intercourse with each other. It can show no title to recognition, no passport for its travels, no old existence. It is all new. And here I borrow the language of Burke on another occasion: —

"It is not a new power of an old kind. *It is a new power of a new species.* When such a questionable shape is *to be admitted for the first time* into the brotherhood of Christendom, it is not a mere matter of idle curiosity to consider *how far it is in its nature alliable with the rest.*"[1]

The greatest of corporations is a nation; the sublimest of all associations is that composed of nations, independ-

[1] Regicide Peace, Second Letter: Works (London, 1801), Vol. VIII. p. 161.

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ent and equal, knit together in the bonds of peaceful fraternity as the great Christian Commonwealth. The Slavemongers may be a corporation *in fact*, but no such corporation can find place in that august Commonwealth. As well admit the Thugs, whose first article of faith is to kill the stranger, — or the Buccaneers, those "brothers of the coast," who plundered on the sea; or, better still, revive the old Kingdom of the Assassins, where the king was an assassin, surrounded by counsellors and generals who were assassins, and all his subjects were assassins; or yet again, better at once and openly recognize Antichrist, the supreme and highest impersonation of the Slave Power.

Amidst the general degradation following such obeisance to Slavery, there are two Christian powers that would appear in sad and shameful eminence. I refer to Great Britain, declared protectress of the African race, and to France, declared champion of "ideas," who, from the very abundance of pledges, are so situated that they cannot desert the good old cause and turn their faces against civilization without criminal tergiversation, which no mantle of diplomacy can cover. Where, then, is British devotion to the African race, so eloquently proclaimed by the British Minister? Where, then, is French devotion to ideas, so ostentatiously announced by the French Emperor? Remembered only to point a tale and show how nations have fallen. Great Britain knows less than France of national vicissitudes, but such an act of wrong would do something in its influence to equalize the conditions of these two nations. Rather than do this thing, better for the fast-anchored isle that it should sink beneath the sea, carrying down its ca-

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thedrals, its castles, its happy homes, its fields of glory, Runnymede, Westminster Hall, and the tomb of Shakespeare. In other days England has valiantly striven against Slavery, winning a truer glory than any achieved by her arms on land or sea; and now she is willing to surrender, at a moment when more can be done than ever before against the monster, wherever it shows its head, — for Slavery everywhere has its neck in this Rebellion. In other days France has valiantly striven for ideas; and now she, too, proposes surrender, although all that she professes at heart is involved in the doom of Slavery, which a word from her might hasten beyond recall. It is in England, where the great victory of Emancipation was first obtained, that now, more even than in France, the strongest sentiment for Rebel Slavemongers is manifest, constituting a *moral mania* which menaces a pact and *concordat* with the Rebellion itself, — as when an early Pope, head of the Christian Church, did not hesitate to execute a piratical convention with a Pagan enemy to the Christian name. It only remains that the new coalition should be signed in order to consummate the unutterable degradation. The contracting parties will be the Queen of England and Jefferson Davis, once patron of "Repudiation," now chief of Rebel Slavery. Then must this virtuous lady, whose pride is justice always, bend to receive the author of the Fugitive Slave Bill as ambassadorial plenipotentiary at her Court.

A new power, dedicated to Slavery, will take its seat at the great council-board, to jostle thrones and benches, while it overshadows humanity. Its foul attorneys, reeking with Slavery, will have their letter of license as ambassadors of Slavery, to rove from court to court,

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over foreign carpets, poisoning the air which has been nobly pronounced too pure for a slave to breathe. Alas for England, vowed a thousand times to the protection of the African race, and by her best renown knit perpetually to this sacred loyalty, now plunging into adulterous dalliance with Slavery, recognizing the new and impious Protestantism against Liberty itself, and wickedly becoming *Defender of the Faith* as now professed by Rebel Slavemongers! Alas for England's Queen, woman and mother, carried off from the cause of Wilberforce and Clarkson to sink into unseemly association with the scourgers of women and the auctioneers of children! — for a "stain" deeper than that which aroused the anguish of Maria Theresa is settling upon her reign. Alas for that Royal Consort, humane and just, whose dying voice was given to assuage the temper of that ministerial despatch, by which, in an evil hour, England was made to strike hands with Rebel Slavery! — for the counsellor is needed now to save the land he adorned from an act of inexpiable shame.

And for all this sickening immorality I hear but one declared apology. It is, that the Union permitted and still permits Slavery, — therefore foreign nations may recognize Rebel Slavery as a *new* power. Here is the precise error. England is still in diplomatic relations with Spain, and was only a short time ago in diplomatic relations with Brazil, both permitting Slavery; but these two powers are not *new*, they are already established, there is no question of recognition, nor do they pretend to found empire on Slavery. There is no reason in any relations with them why a *new* power, with Slavery as its declared "corner-stone," whose gospel is Slavery, and whose evangelists are Slavemongers, should be recog-

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nized in the Family of Nations. If Ireland were in triumphant rebellion against the British Queen, complaining of rights denied, it would be our duty to recognize her as an independent power; but if Ireland rebelled with the declared object of establishing a *new* power which should be nothing less than a giant felony and a nuisance to the world, then it would be our duty to spurn the infamous pretension, and no triumph of rebellion could change this plain and irresistible obligation. And yet, in face of this commanding rule, we are told to expect the recognition of Rebel Slavery.

An aroused public opinion, "the world's collected will," and returning reason in England and France, will see to it that Civilization is saved from this shock, and the nations themselves from the terrible retribution which sooner or later must surely attend it. No power can afford to stand up before mankind and openly vote a new and untrammelled charter to injustice and cruelty. God is an unsleeping avenger; nor can armies, fleets, bulwarks, or "towers along the steep" prevail against His mighty anger. To any application for this unholy recognition there is but one word the Christian powers can utter. It is simply and austerely "No," with an emphasis that shall silence argument and extinguish hope itself. And this proclamation should go forth swiftly. Every moment of hesitation is a moment of apostasy, casting its lengthening shadow of dishonor. Not to discourage is to encourage; not to blast is to bless. Let this simple word be uttered, and Slavery will slink away with a mark on its forehead, like Cain, a perpetual vagabond, forever accursed; and the malediction of the Lord shall descend upon it, saying:

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"Among these nations shalt thou find no ease, neither shall the sole of thy foot have rest; but the Lord shall give thee there a trembling heart and failing of eyes and sorrow of mind; and thy life shall hang in doubt before thee, and thou shalt fear day and night, and shalt have none assurance of thy life; in the morning thou shalt say, Would God it were even, and at even thou shalt say, Would God it were morning."[1]

V.

Too much have I spoken for your patience, if not enough for the cause. But there is yet another topic, which I have reserved to the last, because logically it belongs there, or at least can be best considered in the gathered light of the previous discussion. Its immediate practical interest is great. I refer to the *Concession of Belligerent Rights*, being the first stage to independence. Great Britain led the way in acknowledging the embryo government as belligerent on sea as well as land, and by proclamation of the Queen declared neutrality between the two parties, — thus lifting an embryo, which was nothing else than animate Slavery, to equality *on sea* as well as land with its ancient ally, the National

[1] Deuteronomy, xxviii. 65 – 67. See, *ante*, Vol. V. pp. 304, 305, where the fate of the Flying Dutchman is predicted for our Disunionists. The remarkable story of Peter Rugg, always on the road, driving furiously, but unable to find his way to Boston, illustrates the same blasted condition. Chaucer foreshadows a similar doom: —

"And breakers of the law, soth to saine,
. . . . after that they been dede,
Shall whirle about the world, alway in paine,
Till many a world be passed out of drede."
The Assembly of Foules, 78 – 81.

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Government. Here was a blunder, if not a crime, not merely in the alacrity with which it was done, but in doing it at all. It was followed immediately by France, and then by Spain, Holland, and Brazil. The concession of belligerent rights on land was a name and nothing more, therefore I say nothing about it. But the concession of *belligerent rights on the ocean* is of widely different character, and the two reasons against the recognition of independence are equally applicable to this concession: *first*, the embryo government has no *maritime* or *naval* belligerent rights *de facto*, and, *secondly*, an embryo of Rebel Slavery cannot have the character *de facto* which would justify the concession of *maritime* or *naval* belligerence; so that, were the concession vindicated on the first ground, it must fail on the second.

The concession of *ocean* belligerence is a letter of license from consenting powers to every Slavemonger cruiser, or rather it is the countersign of these powers to the commission of every such cruiser. Without such countersign the cruiser would be an outlaw, with no right to enter a foreign port. The declaration of belligerence imparts legal competence, and the right to testify by flag and arms. Without such competence there would be no flag and no right to bear arms on the ocean. Burke sententiously describes it as an "intermediate treaty *which puts rebels in possession of the Law of Nations with regard to war.*"[1] And this is plainly true.

The magnitude of this concession may be seen in three aspects: *first*, in the immunities it confers, put-

[1] Letter to the Sheriffs of Bristol: Works (London, 1801), Vol. III. p. 144.

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ting an embryo of Rebel Slavery on *equality* with established governments, making its cruisers lawful instead of piratical, and opening to them boundless facilities at sea and in port, so that they may obtain supplies and hospitality; *secondly*, in the degradation it fastens upon the National Government, which is condemned to see its ships treated on *equality* with the ships of Rebel Slavery, and also the just rule of "neutrality" between belligerent powers invoked to fetter its activity against a giant felony; and, *thirdly*, in the disturbance to commerce it sanctions, by letting loose lawless sea-rovers armed with belligerent rights, including the right of search, whose natural recklessness is left unbridled and without remedy even from diplomatic intercourse. The ocean is a common highway; but it is for the interest of all who traverse it that the highway should not be disturbed by predatory hostilities. Such a concession should be made with the greatest caution, and then only under the necessity of the case, on the overwhelming authority of *the fact:* for, from beginning to end, it is simply a question of fact, absolutely dependent on those conditions and prerequisites without which ocean belligerence cannot exist.

As a general rule, belligerent rights are conceded only where a rebel government or contending party in a civil war has acquired such form and body, that, for the time being, within certain limits, it is sovereign *de facto*, so far at least as to command troops and *to administer justice*. On this last point I dwell especially. It is the capacity to administer justice which is the criterion, whether on land or ocean. The concession of belligerence is the recognition of such limited sovereignty, which bears the same relation to acknowledged independence as

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gristle bears to bone. It is obvious that such sovereignty may exist *de facto* on land without existing *de facto* on ocean. It may prevail in armies, and yet fail in navies. In short, *the fact* may be one way on land and the other way *on ocean*. Nor can it be inferred on ocean simply from existence on land. Our Supreme Court has declared that there may be "a limited, partial war," "a restrained or limited hostility," "an imperfect war, or a war as to certain objects and to a certain extent." Thus, on one occasion, hostilities were authorized "on the high seas by certain persons in certain cases," but without authority "to commit hostilities on land."[1] But by the same rule there may be war on land and not on sea, and this may follow from the necessity of the case. If Rebel Slavery does not come within the conditions of ocean war, then, whatever its belligerence on land, it cannot expect it on the ocean. Since every such concession is adverse to the original government, and is made only under the necessity of the case, it must be limited carefully to *the actual fact*. Indeed, Mr. Canning, who has shed so much light on these topics, openly took the ground that "belligerency is not so much a principle as *a fact*."[2] And the question then arises, whether Rebel Slavery has acquired such *de facto* sovereignty on the ocean as entitles it to *ocean* belligerent rights.

There are at least two "facts" patent to all: *first*, that Rebel Slavery is without a single port into which even legal cruisers can take prizes for adjudication; and, *secondly*, that the ships which now presume to

[1] Bas *v.* Tingy, Dallas, R., Vol. IV. pp. 43–45. Chase, J., and Paterson, J.

[2] Despatch, October 12, 1825, — quoted in Speech of Lord John Russell, on the Blockade of Southern Ports, May 6, 1861: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXII. col. 1566.

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exercise *ocean* belligerent rights in its name — constituting that navy which a member of the British Cabinet announced as "to be created" — were all "created" in England, which is the *naval base* from which they sally forth on predatory cruise, without once entering a port of their own pretended government.

These two "facts" are different in nature. The first attaches absolutely to the pretended power, rendering it incompetent to exercise *belligerent jurisdiction* on the ocean. The second attaches to the individual ships, rendering them piratical. These simple and unquestionable "facts" are the key to unlock the present question.

From the reason of the case, there can be no *ocean* belligerent without a port into which it can take prizes. Any other rule is absurd. It is not enough to sail the sea, like the Flying Dutchman; the *ocean* belligerent must be able to touch the land, and that land its own. This proceeds on the idea of civilized warfare, that something more than *naked force* is essential to the completeness of capture. According to the earlier rule, transmutation of property was accomplished by the "pernoctation" of the captured ship within the port of the belligerent, — or, as it was called, *deductio infra præsidia*. As early as 1414, under Henry the Fifth of England, there was an Act of Parliament requiring privateers *to bring their prizes into a port of the kingdom*, and to make a declaration thereof to a proper officer, *before undertaking to dispose of them*.[1] The modern rule interposes an additional check upon lawless violence, by requiring the condemnation of a competent court. This rule, which is among the most authoritative

[1] Statutes at Large, ed. Pickering, Vol. III. p. 20.

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of the British Admiralty, is found in the famous letter of Sir William Scott and Sir John Nicholl, addressed to John Jay, as follows: "*Before the ship or goods can be disposed of by the captor*, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize, in a Court of Admiralty, judging by the Law of Nations and treaties."[1] This is explicit, and is plainly necessary for the protection of neutral commerce. But this rule is French as well as English. It is part of International Law. A *seizure* is regarded merely as a *preliminary* act, which does not divest the property, though it paralyzes the right of the proprietor. A subsequent act of condemnation by a competent tribunal is necessary to determine if the seizure is valid. The question is compendiously called *Prize or No Prize*. Where the property of neutrals is involved, this requirement becomes of absolute necessity. In conceding belligerence, all customary belligerent rights with regard to neutrals are conceded also, so that neutral rights and interests are put in jeopardy. Here we see at once the wrong done. If nothing is due to Civilization, something is due to neutrals. Without dwelling on this point, I content myself with the authority of two recent French writers. M. Hautefeuille, in his elaborate work, says: "The cruiser is not recognized as the proprietor of the objects seized, he cannot dispose of them, but *it is his duty to present himself before the tribunal and obtain a sentence declaring them to be prize*."[2] A later writer, M. Eugène Cauchy, whose work has appeared since our war began, says: "A usage which evidently has its

[1] American State Papers, Foreign Relations, Vol. I. p. 494.

[2] Des Droits et des Devoirs des Nations Neutres, Tom. III. pp. 299, 323, 352.

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source in *natural equity* requires, that, before proceeding to divide the booty, there should be an inquiry as to the regularity of the prize. *Every prize taken from an enemy should be carried before the judge established by the sovereign of the captor.*" [1] But if the power calling itself belligerent cannot comply with this condition, — if it has no port into which it can bring the captured ship, and no court, according to the requirement of the British Admiralty, with "a regular judicial proceeding wherein both parties may be heard," — it is clearly *not in a situation to dispose of a ship or goods as prize.* Whatever its force in other respects, it lacks a vital element of *ocean* belligerence. In that *semi*-sovereignty which constitutes belligerence on land there must be provision for the *administration of justice*, without which there is nothing but a mob. In that same *semi*-sovereignty on the ocean there must be similar provision. It is not enough that there are ships duly commissioned to take prizes, there must also be courts to try them; and the latter are not less important than the former. Such is the conclusion of reason, in harmony with acknowledged principles. How, then, acknowledge belligerent rights where this condition is wanting?

Earl Russell himself, so swift to make this concession, is led to confess the necessity of Prize Courts on the part of *ocean* belligerents, and thus exposes the irrational character of his own work. In a letter to the Liverpool Chamber of Commerce, occasioned by the destruction of British cargoes, the Minister says: "The owners of any British property, not being contraband of war, on board a Federal vessel captured and destroyed by a

[1] Le Droit Maritime International, Tom. I. pp. 65, 66.

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Confederate vessel of war, *may claim in a Confederate Prize Court compensation for destruction of such property.*"[1] Even in the very speech announcing the belligerent rights of our Rebels, including the right to visit and detain British merchant vessels having enemy's property on board and to confiscate such property, Earl Russell was compelled to declare, that "it was *necessarily implied*, as a condition of such acknowledgment, that the detention was for the purpose of bringing the vessels detained before an established Court of Prize, and that confiscation did not take place until after condemnation by such competent tribunal."[2] Such was the express condition, obviously to secure justice. If there be no Prize Court, then justice must fail; and with this failure tumbles *in fact* the whole wretched pretension of *ocean* belligerence, except in the galvanism of a Queen's proclamation or a Cabinet concession.

If a cruiser may at any time burn prizes, it is because of some exceptional exigency in a particular case, and not according to general rule, which practically declares that there can be no right to take a prize, if there be no port into which it may be carried. The right of capture and the right of trial are the complements of each other, through which a harsh prerogative is supposed to be

[1] Wheaton's Elements of International Law, ed. Lawrence, p. 1024.

[2] Speech in the House of Commons, May 6, 1861: Hansard's Parliamentary Debates, Vol. CLXII. col. 1566. At a later day, in a communication to Mr. Adams, on the seizure of the steamer Georgia by a United States steamer, Earl Russell said, that "her Majesty's Government of course expects that a vessel seized under the British flag and claimed by British owners will be brought, with as little delay as possible, *for adjudication into the proper Prize Court*, in which the claim of one of her Majesty's subjects will be tried according to those recognized principles of International Law which govern the relations of the belligerent toward the neutral." — *Earl Russell to Mr. Adams, September* 6, 1864: Papers relating to Foreign Affairs, Part II. p. 298: Executive Documents, 38th Cong. 2d Sess., H. of R., No. 1.

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rounded into the proper form of civilized warfare. Therefore every ship and cargo burned by the captors for the reason that they had no port testifies that they are without that vital sovereignty on the ocean which is needed in the exercise of belligerent jurisdiction, and that they are not *ocean* belligerents *in fact*. Nay, more, all these bonfires of the sea cry out against the power which by precipitate concession furnished the torch. As well invest the rebel rajahs of India, who never tasted salt water, with this ocean prerogative, so that they too may rob and burn; as well constitute land-locked Poland, now in arms for independence, an ocean belligerent, — or enroll mountain Switzerland in the same class, — or join with Shakespeare in giving to inland Bohemia an outlook upon the ocean.[1]

To aggravate this concession, the ships are all built, rigged, armed, and manned in Great Britain. It is out of British oak and British iron that they are constructed, rigged with British ropes, made formidable with British arms, provided with British gunners, and navigated by British crews, so as to constitute in all respects a *British naval expedition*. British ports supply the place of Rebel Slavemonger ports. British ports are open to them, when their own are closed. British ports constitute their *naval base of operations and supplies*, furnishing everything needful, except an officer, the ship's papers, and a court for the trial of the prizes, each of which is essential to the legality of the expedition. And yet these same ships, thus equipped in British ports, and *never touching a port of the pretended government* in

[1] The Winter's Tale, Act III. Scene 3: "*A Desert Country near the Sea.*"

"Our ship hath touched upon
The deserts of Bohemia?"

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whose name they rob and burn, — being simply a rib taken out of the side of England and prostituted to Rebel Slavery, — receive the further passport of belligerence from the British Government, when *in fact* the belligerence does not exist. The whole proceeding, from the laying of the keel in a British dockyard to the bursting flames on the ocean, is a mockery of International Law and an insult to a friendly power.

The case is sometimes said to be new; but it is new only as no such "parricide" is provided against in express terms. It was not anticipated. But the principles which govern it are as old as justice and humanity, in the interests of which belligerent rights are said to be conceded. Here it is all reversed, and it is now apparent, that, whatever the motives of the British Government, the concession was in behalf of *in*justice and *in*humanity. Burning ships and scattered wrecks are the witnesses. If such a case is not condemned by International Law, then has this law lost its virtue. Call such cruisers by whatever polite term most pleases the ear, and you do not change their character with their name. Without a home and without a legal character, they are mere gypsies of the sea, disturbers of the common highway, outlaws, and enemies of the human race.

There is a precedent which shows how impossible it is for a pretended power, without a single port, to possess belligerent rights on the ocean, and how impossible it is for the ship of such pretended power to be anything but a felon ship. James the Second of England, after he had ceased to be *de facto* king, and while an exile without a single port, undertook to issue letters of marque. It was argued unanswerably before the Privy

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Council of William the Third, that a deposed prince could not receive from any other sovereign "international privileges"; "that, if he could grant a commission to take the ships of a single nation, it would in effect be a general license to plunder, *because those who were so commissioned would be their own judges of whatever they took*"; and "that the reason of the thing, which pronounced that robbers and pirates, when they formed themselves into a civil society, became just enemies, pronounced also that a king without territory, without power of protecting the innocent or punishing the guilty, *or in any way of administering justice*, dwindled into a pirate, if he issued commissions to seize the goods and ships of nations, *and that they who took commissions from him must be held by legal inference to have associated 'sceleris causâ,' and could not be considered as members of a civil society.*"[1] These weighty words are strictly applicable to the present case. Whatever the force of Rebel Slavery on land, it is no more on the ocean than the "deposed prince," "without power of protecting the innocent or punishing the guilty, *or in any way of administering justice*"; and, like the prince, it has "dwindled into a pirate," except so far as sustained by British concession. In adducing this precedent, I follow the learned ex-Chancellor, Lord Chelmsford, who used it to show, that, without the concession of belligerent rights to our Rebels, "any Englishman aiding them by fitting out a privateer against the Federal Government would be guilty of piracy."[2] But the reasoning at the Privy Council shows, also, that the concession ought not to have been made.

[1] Phillimore, International Law, Vol. I. pp. 400, 401.

[2] Speech in the House of Lords, May 16, 1861: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXII. col. 2084.

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There is yet another British precedent, which shows how essential are judicial proceedings before appropriation of a captured ship or cargo. The case is memorable. It is none other than that of the famous Captain Kidd, who, on indictment for piracy, as long ago as 1701, produced a commission in justification. But it was at once declared not enough to show a commission; *he must also show condemnation of the captured ship.* The Lord Chief Baron of that day said, that, "if he had acted pursuant to his commission, *he ought to have condemned the ship and goods*"; that "by his not condemning them he seems to show his aim, mind, and intention; that he did not act in that case by virtue of his commission, but quite contrary to it, for he takes the ship and shares the money and goods, and is taken in that very ship, ... *so that there is no color or pretence appears that he intended to bring this ship to England to be condemned or to have condemned it in any of the English plantations*"; and that, "whilst men pursue their commissions, they must be justified, but when they do things not authorized, or never acted by them, *it is as if there had been no commission at all.*"[1] Captain Kidd was condemned to death and executed as a pirate. If he was a pirate, worthy of death, then, by the same rule, those rovers who rob cargoes, burn ships, and adorn their cabins with rows of stolen chronometers, careless of a Prize Court, are entitled to small favor from a civilized power.

Without considering more critically what should be the fate of these ocean incendiaries, or what the responsibilities of England, out of whom they came, I content myself with the conclusion that they are not entitled to

[1] Hargrave's State Trials, Vol. V. col. 314, 315.

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ocean belligerence. And here let it be understood that no question is possible with regard to an established power with access to the ocean; for belligerent rights are fixed by International Law, without foreign recognition; nor can the rights of such a power be a precedent for any concession to a rebel community without ports and Prize Courts.

Pirate is a hard word; but Jefferson did not shrink from applying it to "private armed vessels," infesting our coasts, preying upon our commerce, and making captures at the very entrance of our harbors, as well as on the high seas. "They have carried them off," he says, "under pretence of legal adjudication; but, not daring to approach a court of justice, they have plundered and sunk them by the way, or in obscure places, where no evidence could arise against them, maltreated the crews, and abandoned them in boats in the open sea or on desert shores without food or covering." These things, kindred to what is done by our Rebel cruisers, he calls "enormities," and he announces that he has equipped a force "to bring the offenders in for trial as *pirates*."[1]

Even if Rebel Slavery, coagulated in embryo government, has arrived at that *semi*-sovereignty *de facto* on the ocean which justifies belligerent rights, yet the Christian powers should indignantly decline to make the concession, because by doing so they make themselves accomplices in shameful crime. Here I avoid details. It is sufficient to say that every argument of fact and reason, every whisper of conscience and humanity, every

[1] Annual Message, December 8, 1805: American State Papers, Foreign Affairs, Vol. I. p. 66.

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indignant outburst of an honest man against recognition of Slavery as an independent power, is equally strong against any concession of ocean belligerence. Such concession is half-way house to recognition, and can be made only where a nation is ready, if the fact of independence be sufficiently established, to acknowledge it, on the principle of Vattel, that "whosoever has a right to the end has a right to the means."[1] It is equally clear, that, where a nation, on grounds of conscience, must refuse recognition of independence, it cannot concede belligerence; for, *where the end is forbidden, the means must be forbidden also.* The illogical absurdity of such concession by Great Britain, so persistent always against Slavery, and now for more than a generation the declared protectress of the African race, becomes doubly apparent, when it is considered that every Rebel ship built in England and invested with ocean belligerence carries with it the Law of Slavery, so that, by British concession, the ship becomes an *extension* of *Slave* territory and a floating *Slave* castle.

And yet it is said that this impostor is entitled to ocean rights, and the British Queen is made to proclaim them. Sad day for England, when another wicked compromise was struck with Slavery, kindred to that old treaty which mantles the cheeks of honest Englishmen, when the slave-trade was protected and its profits secured to British subjects! I know not the profits secured by the destruction of American commerce, but I do know that the Treaty of Utrecht, crimson with the blood of slaves, is not so crimson as that reckless proclamation which gave to Slavery a frantic life, and helped for a time, nay, still helps, this demon in the rage with

[1] Le Droit des Gens, Liv. IV. ch. 5, § 60.

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which it battles against Human Rights. Such a ship, with the law of Slavery on its deck and the flag of Slavery at its mast-head, sailing for Slavery, fighting for Slavery, burning for Slavery, and knowing no other sovereignty than the pretended government of Rebel Slavery, can be nothing less in spirit and character than a slave pirate and the enemy of the human race. Like produces like, and the parent power, which is Slavery, must stamp itself upon the ship, making it a floating offence to Heaven, with no limit to its audacity, — wild, outrageous, impious, a monster of the deep, to be hunted down by all who have not forgotten their duty alike to God and man.

Meanwhile there is one simple act which the justice of England cannot continue to refuse. That fatal concession, made in a moment of eclipse, when reason and humanity were obscured, must be annulled. The *blunder-crime* must be renounced, so that Slave pirates may no longer sail the sea, robbing, destroying, burning, with British license. Then will they promptly disappear forever, and with them the occasion of strife between two great powers, who ought to be, if not as mother and child, at least as brothers among the nations. And may God in His mercy help this consummation!

Here I leave this part of the subject, founding my objections on two grounds.

(1.) The embryo of Rebel Slavery has not that degree of sovereignty *on the ocean* which is essential to belligerence there.

(2.) Even if it possessed the requisite sovereignty, no Christian power can make such concession to it without shameful complicity with Slavery.

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Both are objections of *fact*. Either is sufficient. Even if the belligerence seems to be established as *fact*, still its concession in this age of Christian light must be impossible, except under some temporary aberration, which, for the honor of England and the welfare of Humanity, should speedily pass away.

Again, fellow-citizens, I crave forgiveness for this long trespass. If the field traversed is ample, it has been brightened always by the light of international justice, exposing clearly, from beginning to end, the sacred landmarks of duty. I have been frank, disguising nothing and keeping nothing back, so that you have been able to see the perils to which the Republic is exposed from the natural tendency of war to breed war, as exhibited in examples of history, and also from the fatal proclivity of foreign powers to intermeddle, as exhibited in recent instances of querulous criticism or intrusive proposition, all adverse to the good cause, while pirate ships are permitted to depredate on our commerce; then how the best historic instances testify in favor of Freedom, and how all intervention of every kind, whether by proffer of mediation or otherwise, becomes intolerable, when its influence tends to the establishment of that soulless anomaly, a professed Republic built on the hopeless and everlasting bondage of a race; and especially how Great Britain is sacredly engaged by all the logic of her history and all her traditions in unbroken lineage against any such unutterable baseness; then how all the Christian powers constituting the Family of Nations are firmly bound to set their faces against any recognition of the embryo government. — first, because its independence is not *in*

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fact established, and, secondly, because, even if *in fact* established, its recognition is impossible without criminal complicity in Slavery; and, lastly, how these same Christian powers are firmly bound by the same twofold reasons against any concession of ocean rights to this hideous pretender.

It only remains that the Republic should gird itself to the majesty of its duties. War is terrible and hard to bear, with its waste, its pains, its wounds, its funerals. But in this war we are not choosers. We are challenged to the defence of country, and in this sacred cause to crush Slavery. There is no alternative. Slavery began the combat, staking life, *and determined to rule or die.* Let it die; and to this end the country must be aroused. We need a song like "Scots who have with Wallace bled." The cause is greater now than then. We need words like those of Luther, "half battles." Ours is another Reformation and another Revolution. The attempted revolution for Slavery we meet by a counter revolution for Liberty. That we may continue freemen, there must be no slaves; and thus our own security is linked with the redemption of a race. Blessed lot, amidst the harshness of war, to wield the arms and deal the blows under which the monster will surely fall! The battle is mighty; for into Slavery has entered the Spirit of Evil. It is persistent; for such a gathered wickedness, concentrated, aroused, and maddened, must have a tenacity of life which will not yield at once. But no might nor time can save it now.

That the whole war is contained in Slavery may be seen not only in the acts of the National Government, but also in the confessions of Rebel Slavemongers.

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Already the President has proclaimed that the slaves throughout the whole Rebel region "are and henceforward shall be free"; and in order to fix the irreversible character of this sublime edict, he has further announced "that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons."[1] An enlightened commission is constituted to consider how these thronging freedmen can be best employed for their own good and the national defence. Already the sons of Africa, as mustered soldiers of the Union, have shown a discipline and a bravery not unworthy of their ancient fathers, when the prophet Jeremiah said, "Let the mighty men come forth, the Ethiopians and the Libyans that handle the shield";[2] and still further, by their stature, by their appearance in the ranks, and even by the unexpected testimony of sanitary statistics, according to which for every black soldier disabled by sickness there are more than ten white, thus making the army health of the black ten times as sure as that of the white,— by all these things they have shown that the Father of History, who is our earliest classical authority, was not entirely mistaken, when he spoke of Ethiopia as "the most distant region of the earth, whose inhabitants are the tallest, most beautiful, and most long-lived of the human race."[3] Even if these acts of the National Government were less significant, all doubt is removed by the Rebel Slavemongers themselves, who, in Satanic audacity, openly avow that Slavery is the end and aim of the government they seek to establish,

[1] Proclamation, January 1, 1863: Statutes at Large, Vol. XII., Appendix, p. 1269.

[2] Jeremiah, xlvi. 9.

[3] Herodotus, Book III. ch. 114.

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so that the whole bloody war they wage is all in the name of Slavery. Therefore, in battling against the Rebellion, we battle against Slavery. Freedom is the growing inspiration of our armies and the just inscription of our banners. Such a war is not a war of subjugation, but a war of liberation, to save the Republic from a petty oligarchy of taskmasters, and to rescue four millions of human beings from cruel oppression. Not to subjugate, but to liberate, is the object of our Holy War.

And yet British statesmen, forgetting for the moment all moral distinctions, forgetting God, who will not be forgotten, gravely announce that our cause must fail. Alas! individual wickedness is too often successful; but a pretended nation, suckled in wickedness and boasting its wickedness, a new Sodom, with all the guilt of the old, waiting to be blasted, and yet, in barefaced effrontery, openly seeking the fellowship of Christian powers, is doomed to defeat. Toleration of such a pretension is practical atheism. Chronology and geography are both offended. Piety stands aghast. In this age of light, and in countries boasting civilization, there can be no place for its barbarous plenipotentiaries. As well expect crocodiles crawling on the pavements of London and Paris, or the carnivorous idols of Africa installed for worship in Westminster Abbey and Notre Dame.

Even if the Republic were less strong, yet I am glad to believe that the Rebellion must fail from the essential impossibility of any such wicked success. The responsibilities of the Christian powers would be increased by our weakness. Behind our blockade there would be *a moral blockade;* behind our armies there would be the aroused judgment of the civilized world. But not on

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that account can we hesitate. This is no time to pause. Thus do I, who formerly pleaded so often for Peace, now insist upon Liberty as its indispensable condition,[1] — clearly because, in this terrible moment, there is no other way to that sincere and solid peace without which is endless war. Even on economic grounds, it were better that this war should proceed rather than recognize any partition, which, beginning with humiliation, must involve the perpetuation of armaments and break out again in blood. But there is something worse than waste of money; it is waste of character. Give me any peace but a liberticide peace. In other days the immense eloquence of Burke was stirred against a regicide peace. But a peace founded on the killing of a king is not so bad as a peace founded on the killing of Liberty; nor can the saddest scenes of such a peace be so sad as the daily life legalized by Slavery. A queen on the scaffold is not so pitiful a sight as a woman on the auction-block.

While thus steady in purpose at home, we must not neglect that proper moderation abroad which becomes the consciousness of strength and the nobleness of our cause. The mistaken sympathy which foreign powers bestow upon Slavery, — or, it may be, the mistaken insensibility, — under the plausible name of "neutrality," which they profess, will be worse for them than for us. For them it will be a record of shame, which their children would gladly blot out with tears. For us it will be only another obstacle vanquished in the battle for Civilization, where, unhappily, false friends are

[1] "Pax est tranquilla libertas; servitus postremum malorum omnium, non modo bello, sed morte etiam repellendum." — CICERO, *Orat. Philipp. II.* c. 44.

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mingled with open enemies. Even if the cause seem for a while imperilled by foreign powers, yet our duties are none the less urgent. If the pressure be great, the resistance must be greater. Nor can there be any retreat. Come weal or woe, this is the place for us to stand.

I know not if a republic like ours can count even now upon the certain friendship of any European power, unless it be the Republic of William Tell. The very name is unwelcome to the full-blown representatives of monarchical Europe, who forget how proudly, even in modern history, Venice bore the title of *Serenissima Respublica*. It is for us to change all this. Our consistent example will be enough. Thus far we have been known chiefly through that vital force which Slavery could only degrade, but not subdue. Now, at last, by the death of Slavery, will the Republic begin to live. For what is life without Liberty? Stretching from ocean to ocean, teeming with population, bountiful in resources of all kinds, rejoicing in that righteousness which exalteth a nation, and thrice happy in universal enfranchisement, it will be more than conqueror. Nothing too vast for its power, nothing too minute for its care. Triumphant over the foulest wrong ever inflicted, after the bloodiest war ever waged, it will know the majesty of Right and the beauty of Peace, prepared always to uphold the one and to cultivate the other. Strong in its own mighty stature, filled with all the fulness of a new life, and covered with a panoply of renown, it will confess that no dominion is of value that does not contribute to human happiness. Born in this latter day and child of its own struggles, without ancestral claim, but heir of all the ages, it will stand forth to assert the dignity of man,

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and wherever any member of the Human Family can be succored, there its voice will reach, — as the voice of Cromwell reached across France, even to the persecuted mountaineers of the Alps. Such will be this Republic, upstart among the nations. Ay! as steam-engine, telegraph, and chloroform are upstart. Comforter and helper like these, it can know no bounds to its empire over a willing world. But the first stage is the death of Slavery.

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APPENDIX.

THIS speech was made at a crisis in our foreign relations when they were watched with more than the wonted anxiety, which began with the hasty concession of belligerent rights, as early as May 13, 1861. Among painful incidents may be mentioned the affair of the Trent, with the attendant menace, the escape of the Florida, and then of the Alabama, the damage to our commerce by these British vessels, the report of other vessels building for the Rebels, the swarm of British blockade-runners with arms and powerful cannon, adverse speeches of British statesmen, offensive articles of the British press, and movements for the recognition of the Rebels as an independent power.

As early as March 4, 1861, Mr. Gregory gave notice in the House of Commons that on an early day he would call the attention of her Majesty's Government to the expediency of a prompt recognition of the Southern Confederacy of America. April 16, Mr. Gregory renewed his notice, and added a call for papers. This motion was afterward deferred from April 30 to May 13, and on May 16 until June 7, when it was finally postponed *sine die*. After that frequent debates occurred in both Houses of Parliament, involving the course of England to the United States. As late as June 30, 1863, in the summer before Mr. Sumner's speech, a long debate was started in the House of Commons by Mr. Roebuck, on presenting a petition praying the House to enter into negotiations with the great powers of Europe with the object of recognizing the independence of the Confederate States. To all these things was now superadded the open construction at Birkenhead of two powerful iron-clad war-vessels, known as the Rebel rams.

The country was alarmed, for the contribution of these powerful vessels to the Rebel navy was felt to be an open participation in the Rebellion. Foreign war seemed to menace. Mr. Sumner, in private correspondence with England during the summer, did not hesitate to say, that, in his judgment, the sailing of these Rebel rams from an English port, after the ample notice given, would be equivalent to a declaration of war by England, not unlike the seizure of the Spanish

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galleons or the bombardment of Copenhagen. Our diplomatic correspondence shows a similar sentiment in important official quarters. July 11, Mr. Adams, our minister at London, after setting forth "a systematic plan of warfare upon the people of the United States carried on from the port of Liverpool, as well as in less degree from other ports in the kingdom," called the attention of Earl Russell to "the construction and equipment of a steam vessel of war of the most formidable kind now known," and intimated that such a proceeding would "be regarded by the Government and people of the United States with the greatest alarm, as virtually tantamount to a participation in the war by the people of Great Britain."[1] At different times he transmitted additional papers, showing the character of these vessels. Meanwhile one iron-clad ram, being launched, received her engines, and was engaged in receiving her coal, ready to depart, when, September 4, Mr. Adams, transmitting further testimony, begged permission to record, in the name of his Government, "this last solemn protest against the commission of such an act of hostility against a friendly nation."[2] On the same day he received a communication from Earl Russell, bearing date September 1, where, after setting forth the alleged insufficiency of the testimony against the vessels, he says: "Her Majesty's Government are advised that they cannot interfere in any way with these vessels."[3] The next day Mr. Adams replied: "I trust I need not express how profound is my regret at the conclusion to which her Majesty's Government have arrived. . . . . It would be superfluous in me to point out to your Lordship that this is war. No matter what may be the theory adopted of neutrality in a struggle, when this process is carried on, in the manner indicated, from a territory and with the aid of the subjects of a third party, that third party, to all intents and purposes, ceases to be neutral. Neither is it necessary to show that any government which suffers it to be done fails in enforcing the essential conditions of international amity towards the country against whom the hostility is directed."[4] On the very day of this reply, Mr. Seward, at Washington, addressed Mr. Adams as follows: "Can the British Government suppose for a moment that such an assault as is thus meditated can be made upon us by British built, armed, and manned vessels, without at once arousing the whole nation and making a retaliatory war inevitable? . . . . For the interest of both countries, and of civilization, I hope they will not let a blow fall from under their

[1] Papers relating to Foreign Affairs, 1862-63, Part I. pp. 361, 362: Executive Documents, 38th Cong. 1st Sess., H of R. No. 1.

[2] Ibid., p. 412.

[3] Ibid., p. 414.

[4] Ibid., p. 418.

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hands that will render peace impossible."[1] Mr. Beaman, in his essay on the Alabama Claims, after examining this correspondence, says, it "shows, that, if these rams had been allowed to escape, peace between Great Britain and the United States would have been no longer possible."[2]

It is easy to see that the two countries were on the verge of war. Happily, this was avoided by a tardy act, made known to Mr. Adams by a note, under date of September 8: "Lord Russell presents his compliments to Mr. Adams, and has the honor to inform him that instructions have been issued which will prevent the departure of the two iron-clad vessels from Liverpool."[3] The Rebel rams were stopped.

Meanwhile Mr. Sumner had accepted an invitation to speak in New York on our foreign relations, at a time to be fixed by himself. Watching the course of events, and seeing clearly the alternative that presented itself to Mr. Adams and Mr. Seward, he wrote at the close of August, fixing September 10th for his speech; and here his purpose was twofold. Anxious to arrest the fatal tendency, he was not without hope that he might obtain a hearing in England, especially from the Cabinet, to most of whom he was personally known; but, if unsuccessful in this last frank effort for peace, then he trusted that his speech would be a vindication of his country on the issue forced by England, and an appeal to the moral sentiments of the civilized world. On this account he dwelt especially on Slavery, and the impossibility in a civilized age of recognizing a *new* power openly proclaiming this Barbarism as its corner-stone.

The reception of this speech at home was cordial and sympathetic; in England it was the reverse, although there were friendly exceptions. A few extracts from the American press will show the unison with Mr. Sumner, which becomes important in illustrating his position, and also the divergence of sentiment in the two countries.

The New York press was outspoken.

The *Herald* said: —

"The very voluminous speech of Mr. Senator Sumner at the Cooper Institute, the other evening, in two or three points is a remarkable production. His exposure and denunciations of the hypocritical pleadings and false pretences of the British Government, in justification of its sneaking and perfidious neutrality in this war, are well administered, and, considering the rapidly dissolving Davis Confederacy, these views of the learned Senator at this

[1] Papers relating to Foreign Affairs, 1862-63, Part I. pp. 416, 417.
[2] Charles C. Beaman, Jr., The National and Private Alabama Claims, p. 165.
[3] Papers relating to Foreign Affairs, 1862-63, Part I. p. 419.

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time can hardly fail to make a decided sensation, not only upon the public mind of England, but upon the rhinoceros hides of the British Cabinet. . . . .

"But the whole of this exhaustive and exhausting discourse of the inexhaustible Senator is spoiled by his venomous and rabid denunciations of African Slavery. In view of this peculiar Southern institution he becomes as fierce and remorseless as a vicious bull, when a piece of red flannel is flaunted before his eyes."

The *Times* said: —

"We give up one half of the entire surface of to-day's issue of the *Times* to the important speech upon our Foreign Relations delivered by Senator Sumner in this city last night. The subject at the present moment is one of such deep public interest, and of such overshadowing national importance, that we believe we cannot do a greater service than by giving in full the views of one who, by his official position as Chairman of the Senate Committee on Foreign Affairs, by his relations with some of the foremost publicists of England and France, and by his intimate knowledge of the whole subject, is capable of speaking with intelligence, if not with authority.

"We can give no analysis or estimate of the discourse at this moment, as it was a late hour of the night before he concluded its delivery; but every intelligent citizen will doubtless give due study to its views and statements, which, we need not say, are set forth in a style highly ornate, yet lucid, and distinguished by all the characteristics of a professed orator."

The *Evening Post* said: —

"It is a very important subject, treated by him with great ability and knowledge, and in a manner which must leave little to be added by the diligence of others. It was listened to with profound attention and frequent expressions of interest and approbation by one of the most closely packed audiences which the hall at Cooper Institute ever contained."

Horace Greeley, in a contribution to the *Independent*, said: —

"Mr. Sumner's speech is not, therefore, a mere rehearsal and arraignment of national wrongs already endured. It is a protest and a warning against those which are imminently threatened. In showing how deeply, flagrantly, France and England have already sinned against us, he admonishes them against persistence in the evil course on which they have entered, against aggravating beyond endurance the indignities and outrages they have already heaped upon us. . . . . Mr. Sumner's is the authentic voice, not of the mob, but of the people. He utters the sentiments of the conscientious, the intelligent, the peace-loving. His inoffensive protest against the wrongs to which we have been subjected is utterly devoid of swagger or menace. It is a simple, but most cogent demonstration, by the application thereto of the established principles of International Law, of the systematic injustice to which we as a people have been subjected. A miracle of historical and

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statesmanlike erudition, his address is severe without being harsh, — an indictment judicial in its calmness, its candor, its resistless cogency."

The *Boston Journal* said: —

"We trust no one will be deterred by its length from reading Mr. Sumner's speech on our Foreign Relations; and we are sure that no one will be, who fairly enters upon the subject. . . . . The speech is the most able and elaborate ever delivered by Mr. Sumner, and will be read with great interest abroad as well as in this country. Let us hope that it will help to open the eyes of the people of England and France to the treachery of their rulers to the progress of civilization and the spirit of the age."

Then, in another article, the same journal said: —

"The recent speech of Mr. Sumner meets with the warmest expressions of commendation from all quarters, excepting, of course, the journals which are wedded to the interests of Slavery. . . . . The speech was, in fact, timely, and, while it was designed primarily to communicate facts of the gravest interest to the people of the loyal States, it will have the secondary and not less important effect of making an impression upon the Cabinets of England and France. The fairness, candor, earnestness, and ability with which great questions of international rights are discussed by a statesman so well known abroad and so much respected as Mr. Sumner must secure for the speech an attentive perusal by those who shape public opinion in the Old World."

A correspondent of the *Boston Journal*, calling himself "An European Democrat," wrote: —

"The speech of Senator Sumner at the Cooper Institute will produce a startling effect in Europe. It may safely be asserted that the opinions of that gentleman upon international politics are received with greater favor in England and France than those of perhaps any other American statesman. He is regarded as most liberal and cosmopolitan in his views; his acquaintance with leading public men in both countries is known to be alike extended and intimate; and such declarations, therefore, as those to which he gave utterance last Thursday evening will necessarily have extraordinary weight in political and commercial circles."

The *Transcript*, of Boston, said: —

"The great speech of Senator Sumner upon the Foreign Relations of the United States will command the attention of all intelligent men in Europe and America. It is a thorough and exhaustive discussion of English and French diplomacy, so far as either bears upon the present war. The effect of the complete exposition of the policy of Great Britain with regard to Slavery since 1807, proving by clear and irrefragable historical instances, the

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apostasy of the existing ministry to the high principles so long maintained, must be great among all reflective Englishmen. . . . . Mr. Sumner's comprehensive views of International Law, the extensive learning with which he enriches the discussion of it, his convincing logic and kindling eloquence, together with the results he reaches, make this address one of great importance, and cannot but exert the most beneficial influence in this country and in Europe."

The *Independent*, of New York, in a leading article entitled "Sumner and Burke," presented an elaborate parallel between the recent speech and that against Warren Hastings.

"The trial of Hastings was really a trial of England herself. So Burke evidently felt it. The bill of charges and the speech upon them was more of an appeal against the rulers of England than the despot of India. . . . . As he arraigned England against herself, so does Sumner. As he sought to flatter her to the right by appeals to her highest professions and practices against the swift current of her ruling passions and purposes, so does Sumner. As he failed in his attempt, so, we fear, will Sumner. . . . . Grander is his position, as well as his appeal, than those of Burke. He stood before a House of British nobles: Sumner stands before the Congress of Nations. Burke impeached the conduct of a satrap: Sumner the heads of powerful nations. Burke denounced him in the name of justice and law outraged by his abuse of subject provinces: Sumner denounces England in the interests of outraged internationality and humanity, for her conduct toward a free and equal nation engaged in casting out the devils that Britain's lust of gold and power had forced upon her in the days of her helplessness. He has constrained the haughty powers to appear at the bar of the Nations. The world will hear his plea, and give him the verdict."

Zion's Herald, of Boston, an able religious journal, said: —

"This speech is not hostile in its tone, unless our transatlantic friends see fit to make it so. It is a grand effort in behalf of those principles which are to underlie our renovated nationality; it is a noble assertion of our rights against wrongs which are emphatically condemned by the best minds of England and France themselves. If our sister nations will heed this appeal, and cease to give the support hitherto accorded to our foes, it is not too late for them to gain thereby the friendship of our people and the praise of mankind; but if any European power should now directly espouse the cause of the Rebellion, the responsibility of war will rest with them and not with us; and even if they continue to grant the Rebels their sympathy and moral support, the severe words of Mr. Sumner will be but a faint expression of the infamy to which an indignant posterity will consign them."

The New York correspondent of *The Congregationalist*, at Boston, wrote: —

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"The whole country owes Mr. Sumner a debt of gratitude for this timely, thorough, and weighty exposition of our Foreign Relations. Its facts and arguments must produce a strong impression upon the popular mind in England; and every American who has friends abroad should hasten to put in circulation in Great Britain as many copies of the speech as he can command. Its tone, at once dignified, firm, and conciliatory, will help our cause wherever it is read, while it cannot fail to ally to us all who really value truth and honor between nations, and who abhor Slavery and its abettors."

Numerous letters, in harmony with the press of the country, attested the extent to which Mr. Sumner was sustained, being spontaneous testimony to the prevailing sentiment. Written as they were for the purpose of sympathy and encouragement, they show the general conscience and intelligence. Prompted by the speech, and relating exclusively to it, they may be considered among its incidents. The warm appreciation of Mr. Sumner's service was less important than the aspiration for country and for mankind which they disclosed.

Mr. Seward wrote from the Department of State: —

"I have read your address on Foreign Relations without once stopping.

"You have performed a very important public service in a most able manner, and in a conjuncture when I hope that it will be useful abroad and at home. . . . .

"You are on the right track. Rouse the nationality of the American people. It is an instinct upon which you can always rely, even when the conscience that ought never to slumber is drugged to death."

Mr. Chase wrote from the Treasury Department: —

"In spite of finest print almost illegible, I have read your great speech from beginning to end. It is a noble effort, quite worthy of you. It exhausts the whole subject, leaving nothing even for a gleaner. I shall await with curiosity, not unmixed with anxiety, the rebound from Europe."

Hon. Thomas Corwin, Minister Plenipotentiary in Mexico, wrote: —

"I cannot withhold my mite of praise for the truly masterly manner and matter of the whole pamphlet. Your country, Europe, all Christendom, and Heathendom too, are your debtors."

Hon. Christopher Robinson, Minister Plenipotentiary in Peru, wrote: —

"I have read it with great attention, and with the highest pleasure, for the principles it announces, the facts it narrates, and the firm and manly discussion of them. As an explanation of the great principles of International Law applicable to the nefarious Rebellion, it will open the eyes of the

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American people to the important fact, that, in all its disguises, English and French policy has wilfully ignored the principles of justice and liberty which the Government of the United States are struggling to maintain."

Hon. Horatio J. Perry, Secretary of Legation at Madrid, wrote :—

"Your noble effort was well timed. I have had portions of it reproduced in the Spanish press with the best effect. Another part will reappear here in a more durable form, which I shall take pains to send you.

"These admonitions of yours to the European powers have always been of the highest possible service. Whatever necessity there may have been (and there has been necessity) for our diplomatic representatives to act with consummate prudence in our direct intercourse with the courts hostile to us, it was no less necessary that the voice from home, the utterances of our Houses of Congress, of our leading Senators, should be bold and unsubdued, — confidence in ourselves and in our cause, above all, the consciousness of right, and the evidence that we were not afraid."

Professor Charles D. Cleveland, Consul at Cardiff, wrote from his consulate : —

"I need hardly say with what pleasure I read your recent speech at New York. Though Earl Russell did not like some things in it, *it evidently did him much good.* I think I saw clearly that he FELT the force of your arguments; for, if you will notice, it was not till after your speech had reached this country, and after quotations were made from it in papers friendly to us, that the more decided orders were given to stop the Rebel rams in the Mersey."

The latter statement is confirmed by a despatch of Mr. Adams to Mr. Seward, dated October 16, where he says: "The Government has, within the past week, adopted measures of a much more positive character than heretofore to stop the steam-rams."[1]

Hon. T. O. Howe, Senator of the United States, wrote from Wisconsin :—

"Stopping here, where I am to speak this evening, I cannot refrain from telling you that I approve it. How much I approve it I am utterly unable to tell you.

"Such conciseness of statement, such fulness of research, such wealth of illustration, such iron logic, heated, but unmalleable, I really do not think are to be found in any other oration, ancient or modern.

"To me it seems bursting with new and most inspiring ideas. But even when you deal with ideas which are not new, but old and familiar, you present them in words so marvellously chosen that they are themselves giant forces. . . . .

[1] Papers relating to Foreign Affairs, 1862-63, Part I, Supplement, p. iv.

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"No single man has ever so grandly struggled against the barbaric tendencies of a frightfully debauched generation. I cannot certainly foresee the future; you may be worsted in this encounter; but I know the world will be the better for it."

Hon. Henry B. Anthony, Senator of the United States, wrote from Providence: —

"I suppose you are tired of compliments about your great speech. Everybody says it is one of the best things that even you have done. It must have a large and beneficial effect, not only here, but in Europe, where your reputation will secure for it the consideration of those who control public affairs and mould public opinion."

Hon. Samuel S. Blair, a Representative in Congress from Pennsylvania, wrote: —

"I have just read your New York speech on our Foreign Relations, and most cordially thank you for a statement of our cause which ought to give us the verdict of the civilized world."

Hon. Joshua R. Giddings, for so many years eminent as Antislavery champion in Congress, and then Consul-General at Montreal, wrote: —

"I have just read your lecture at Cooper Institute. That production excites in my heart the deepest gratitude and the highest pleasure."

Hon. Simon Cameron, who had recently returned from Russia, where he had been Minister, wrote: —

"It is a masterly production of a master mind, and if you had never made a single mental effort before, or if you should cease from this moment to enjoy the power of speech, it would stand as a monument unrivalled among the many great productions of American and British statesmen. It is unanswerable. Its influence, like all great ideas founded on truth, may be comparatively slow, but it is already acting over the world, and in a brief period it will be so potent that men and nations will be ashamed to avow a belief in any other code of morals."

Rev. William H. Furness, the accomplished Unitarian preacher of Philadelphia, wrote: —

"I have no words to express my sense of the large familiarity with human affairs, and of the conscientious fidelity which it shows. If you had done nothing else for the past year but prepare that, I should hold you to be a miracle of work. It is impossible it should not tell. It indicates a statesmanship fitting the grandeur of our unequalled cause."

Dr. Henry I. Bowditch, of Boston, eminent in the medical profession and as an Abolitionist, wrote: —

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"Allow me to express to you my most hearty thanks for your noble, and, as it seems to me, unanswerable, speech at New York. It is truly statesmanlike, and I regard it in that light as one that will last longer and have more effect than any delivered by any one in this country since the war began. It must have a wide influence in Europe. I thank you, therefore, most heartily for it. It will aid mightily public sentiment in England, and *tend* to force the Government of that country, for consistency's sake, at least, to deal more fairly."

Parker Pillsbury, the earnest Abolitionist, wrote from Concord, New Hampshire: —

"When a nation is expressing its admiring gratitude for your recent masterly oration on our Foreign Relations, what place or what need for my feeble utterance remains? And all the nations will thank you, as they shall read, in present and coming time, this chapter in the new political dispensation. It is a scripture for the ages."

Hon. Amasa Walker, formerly a Representative in Congress, a Vice-President of the American Peace Society, devoted to the cause of peace, and a writer on political economy and finance, wrote: —

"It is the grandest thing you have yet done, if I am qualified to judge. I think it cannot fail to exert a great influence at home and abroad. I am quite anxious to find out how it is received in England, and am much mistaken, if it does not produce a great impression.

"The friends of our Government will be greatly delighted at it, our enemies greatly annoyed by it.

"I have the impression that there is no speech of any American statesman, that has ever been printed, that will secure such a lasting reputation, and be so often referred to in the future, as this."

Hon. George R. Russell, of various experience, who had recently returned from Europe, wrote: —

"I have often thought of writing you about your speech on our Foreign Relations, which I read with much attention, and decided that it was the best that could be said. I met a friend of ours a few evenings since, and he told me that he had said to you that you made a great mistake in assailing England as you had done. I met him with the rejoinder, that you had hit the nail on the head, that the proofs of change we see daily are in consequence of your attacks, and that, instead of upbraiding you, we owed you our heartfelt thanks for the good you had done."

Brigadier-General Saxton, of the United States army, wrote from his station at Beaufort, South Carolina: —

"I can hardly express to you the intense satisfaction and delight with which I read your great oration delivered in New York. In my humble

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opinion you have rendered a great service to our country and to humanity. The words of truth and wisdom which you have spoken cannot fail to command the attention and respect of the statesmen of England as well as of this country."

Captain George Ward Nichols, of the United States army, wrote from his station at Milwaukee : —

"I hardly know what to say of this eloquent exposition, so full of righteous indignation, terrible denunciation, exhaustive research, unanswerable argument, — so abundant, so powerful, and so eloquent in the cause of humanity. It seems to me like a timepiece, which, with unfailing faith, I consult to mark the hour in a stormy day, unmindful of the wondrous art and wit which combine this perfect whole. I thank you more than I can say for this noble speech. It is already a part of the history of this momentous time. It is as much a fact as is Gettysburg or Vicksburg."

George Baty Blake, Esq., a banker of Boston, wrote : —

"I have read attentively your speech made in New York, and, let me say, I think it exactly suited to the occasion; and if it finds circulation in Great Britain, it cannot fail to do us much good in our foreign relations. Plain speech with John Bull, and to the point frankly, is what always proves most effective with him, in my experience."

The late James A. Dix, editor of the *Boston Journal*, declared his sympathies : —

"I cannot resist the temptation to express the pleasure which the perusal of your speech on our Foreign Relations has afforded me. I do not think it extravagant to say that it is the ablest speech ever delivered in this country. Certainly it is the ablest of any with which it could appropriately be compared. In the number, value, interest, and importance of its historical facts and precedents, in the apt use of materials derived from laborious research, and in the lucid treatment of the topics discussed, it is unsurpassed."

Major B. Perley Poore, for a long period connected with the press, wrote from his country home : —

"If human gratitude be among the number of our national virtues, the highest honors should contribute to reward you for your address on Foreign Relations, so replete with patriotism, learning, and practical knowledge, knowledge of public law and the practice of nations, a thorough acquaintance with civil government and the great question of Freedom which underlies and overtops everything else. I have read it twice in the small type of the *Journal*."

Pliny Miles, the writer on Postal Affairs, wrote from London to President Lincoln, who forwarded the letter to Mr. Sumner : —

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"Mr. Sumner's late speech in New York has arrived here in the journals, and is attracting a great deal of attention. Quotations and extracts are made from it in the leading liberal papers; but really the whole speech ought to be printed here, and circulated in pamphlet form. If sent to all the members of both Houses of Parliament and to the press, I think it would do great good."

Daniel R. Goodloe, for a long time connected with the press, then of Washington and afterwards of North Carolina, wrote :—

"I regard Lord Russell's speech at Blairgowrie as a reply to yours; and the country is indebted to you for the important concessions he makes, and for the greatly modified tone in which he speaks of our affairs."

Hon. A. C. Barstow, formerly Mayor of Providence, wrote : —

"I returned from Washington this morning. Have read your speech with great satisfaction. I think you have touched the public pulse more widely than ever before."

The speech had a different reception in England, being criticized by the press, and by Earl Russell in a public speech.

The New York correspondent of the London *Standard* called Mr. Sumner "the mouthpiece of the President," and said that the speech "had been carefully examined by the President, and was analyzed by the confidential members of the Cabinet, before being let off to the public in this great city." This was a mistake. Neither the President nor any of his Cabinet had seen a line of the speech.

Its delivery was reported by the London *Times* of September 22d, in a telegraphic despatch from Greencastle, in Ireland : —

"He denounced the conduct of the British Government in permitting the building of war steamers in British ports for the Confederates and recognizing on the part of the South any belligerent rights upon the ocean. He disbelieved that either France or England would intervene in favor of a state that based itself upon Negro Slavery, and asserted that all intervention in the internal affairs of another nation was contrary to law and reason, unless such intervention were obviously on the side of human rights."

The *Times* followed with an elaborate leader, undertaking to correct statements of law and fact, dwelling especially on the allegation, that, without the concession of belligerent rights, the supply of munitions of war to rebels would have been a violation of English law. Here Mr. Sumner had the authority of the English Law Lords in Parliament, openly declaring that without such concession the building of a Rebel ship in England would have been under the penalties of piracy, and it is difficult to see why a corresponding penalty would not have followed

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the supply of munitions of war. In each case the article is supplied for offence against a friendly power. Sir George Cornewall Lewis, remarkable for learning and good sense, has said: "The law of England recognizes the principle of protecting a foreign government by its own municipal regulations"[1]; and he refers to the trials for libels on foreign sovereigns, and also to the proceedings in 1858 against Simon Bernard, the Frenchman, indicted for a plot to assassinate the Emperor Louis Napoleon, in supplying the grenades used by Orsini in his attempt. In the latter case, Lord Chief Justice Campbell said to the jury: "If you believe that he, as there is strong evidence to show, being acquainted with Allsop's views, and knowing that Allsop had got these grenades, *assisted in having them transported to Brussels, — if you believe that he bought in this country the materials for making the fulminating powder with which these grenades were charged,* — if you believe, that, living in this country, and owing a temporary allegiance to the sovereign of this country, *he sent over the revolvers* with the view that they should be used in the plot against the Emperor of the French, ... it will be a fair inference, I think, to draw, that he had a guilty knowledge of that plot."[2] Though this judgment was in the case of a conspiracy to take the life of a foreign sovereign, it is not easy to see why the same principle is not applicable to a conspiracy against a friendly power. To this case may be added the authority of Lord Lyndhurst, who laid it down in debate, with the concurrence of other Law Lords, that a conspiracy in the United Kingdom, either by native subjects or aliens, to do any act, either at home or abroad, tending to embroil the Government with that of any foreign country, is a misdemeanor.[3] Is a rebellion without belligerent rights different from a conspiracy? Its nature was changed by the Queen's Proclamation, which not only helped the Rebels, but created a new set of customers.

The character of the leader in the *Times* appears in its conclusion:—

"We believe our readers have by this time had enough of the logic of Mr. Sumner. It is based neither on law nor on fact, but upon his own sympathies and antipathies, which he is pleased to assume must also be ours, on the supposition, which we do not admit, that the North are obviously in the right, and on the inference, which we refuse to draw, that, even if the North are in the right, we are bound to violate the laws of neutrality in order to assist them."

The *Daily News*, of London, in its first notice, said:—

"He spoke under the impression that the English Government was about

[1] On Foreign Jurisdiction and the Extradition of Criminals, p. 65.
[2] Ibid., pp. 59, 60.
[3] Ibid., pp. 66, 73.

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to permit the Confederate iron-clads to leave this country, and he interpreted their previous policy by this supposed breach of neutrality. Every candid man will make allowance for words spoken under provocation, and distinguish them from the utterances of settled malevolence, such as we were accustomed to hear from the American statesmen now at Richmond, and still hear from their allies in the Northern States."

In a second article, the same journal criticized the speech at length, saying: —

"It is a strange delusion. It makes one wonder whether it is still possible that a republican legislator, now blinded by panic and perplexed by jealousy, should even yet recover his sense and temper, and see the case as others see it. . . . . Instead of using his influence, as the friend of many Englishmen, to bring the two peoples to a clear understanding, and the calm temper which arises out of it, he has nourished and propagated a delusion, and has applied all his powers of influence and eloquence to raise and kindle the passions of his countrymen against a nation which, if not accustomed to flatter, is capable of a sound and durable friendship with a people exhibiting such qualities as the citizens of the Free States are manifesting now. The American people have nothing to fear from us, while they treat us justly. We believe that Mr. Sumner knows this as well as we do, however he may be for the hour beguiled into passion and error."

The *Scotsman*, of Edinburgh, said: —

"The splendid oration which he delivered at New York on the 10th inst., though full of a strange injustice towards ourselves, ought not to lessen our love for the man, and will increase our admiration of the orator and philanthropist; but, if there was any idea that Mr. Sumner could reason clearly as well as feel rightly and speak eloquently, that idea will be dissipated. All the multitude of eloquent and burning words which he pours forth against Slavery will here find ready echo; and even when he enters on accusations against this country, as having 'intermeddled on the side of Slavery,' it will be felt that he speaks in the spirit, not of a mean and jealous enemy, but of a high-minded, though mistaken friend. But no non-American man can fail to perceive that there is a grand mistake lying at the root of all the complaints he makes against us: he would have Great Britain in her national capacity to deal with American affairs according to moral sentiments as distinguished from political rules, and he condemns her for doing what he did himself and is doing still. . . . . He tries, indeed, to make a difference between the hypothetical Confederate States and all other Slave States, including the late United States. They will, he says, form a '*new*' Slave Power. He forgets, that, though the Power may be new, the Slavery will be old."

The Manchester *Guardian* said: —

"We receive by the last steamer from New York the report of a speech recently delivered by a person of great consideration in the councils of the

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present Government at Washington, who maintains that the favor already given to the Confederacy by England deserves the execration of humanity, and supplies, if necessary, abundant cause for war. The speaker to whom we allude is Mr. Charles Sumner, the President of the Committee of the Senate on Foreign Affairs. He denounced, we are told, as 'a betrayal of civilization,' England's recognition of the Confederate States as belligerents, and her proclamation of neutrality. *The absurd injustice of this often repeated complaint is sufficiently shown by the simple observation, that, in recognizing the belligerent rights of the South, we did exactly what the Federal Government itself did*, and has continued to do from the commencement of the war. We did, moreover, what no power could have avoided, without absolutely intending to take a direct part in the subjugation of the seceding States. But Mr. Sumner correctly appreciates the consequences of this course, as adopted by ourselves and France, in perceiving that it insured to the South the free exercise of all the power of making war from its own resources which an independent state could possess."

The *Economist*, of London, a weekly journal, in an article entitled "Mr. Sumner's Speech at New York," among many remarks of bad temper and doubtful candor, said: —

"Mr. Charles Sumner has been delivering a speech before a crowded audience in New York which will cause much pain and disappointment to all friends and well-wishers of the Federal United States. It is weak in argument, unfair and unjust in its representations, and bitter in tone and temper. If men of Mr. Sumner's education and position in America really believe the things they say and indulge the feelings to which they give utterance, it is clearly hopeless to attempt either to enlighten their understanding or to allay their irritation. . . . .

"Two other considerations will fully justify us in describing Mr. Sumner's address as marked by the most distinctly unfair and unfriendly *animus* toward this country. The first is, that he has carefully avoided doing the slightest justice to the strong Antislavery feeling which prevails among us, and even insinuates a disposition to favor the slave empire of the South. . . . .

"Finally, what construction is to be placed upon the remarkable circumstance, that, throughout his whole address, while endeavoring to rouse the wrath of his countrymen by a vicious enumeration of the supposed offences of Great Britain, he says not a word against France, which has participated in nearly all, and added others of her own? He charges us with hostile designs, because we recognized belligerent rights in the Confederates; but he utters no word of complaint against France, who recognized these at the same date and in the same terms."

Referring to Mr. Sumner's speech, it will be seen how untrue is the statement that he said "not a word against France"; nor is it true that he was unjust to "the strong Antislavery feeling" which had

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done so much honor to English history, although he lamented that it was impotent to save England from fatal concession to Rebel Slavery.

There was a critical spirit in the provincial press. The Halifax *Reporter*, in Nova Scotia, said : —

"Mr. Sumner, whose judgment is evidently warped by his abhorrence of Slavery, seems to expect that England should look upon the North as waging the war on behalf of human liberty. It is obvious he considers, that, in recognizing the Confederates as belligerents, her statesmen have exhibited a sympathy with slaveholders which is unjustifiable. . . . .

"Mr. Sumner is peculiarly wrathy that any portion of the British people should have been allowed to give aid and comfort to the Rebels by affording them supplies of various kinds."

The *Globe*, at Toronto, said : —

"He reviews the whole transactions between England and the United States since the commencement of the civil war with great warmth, beginning with the proclamation of neutrality and ending with Mr. Laird's rams, and tortures every action of the British Government into a manifestation of unfriendliness towards the Republic. We expected from Mr. Sumner more enlightened consideration for the circumstances in which the English people have been placed, and some acknowledgment of the provocation they have received from this side of the Atlantic. . . . .

"There is only one excuse for Mr. Sumner. As an Abolitionist, he has been accustomed to look to England for sympathy and aid, and he is disappointed to find so many enemies where he supposed he would see none but friends. This feeling should not prevent him, however, from doing justice as a publicist, nor, as a statesman, from pursuing the course most wise and expedient at the moment."

In a different tone, the *Morning Star*, of London, the constant friend of the national cause, said : —

"The Hon. Charles Sumner has not belied the confidence inspired by a long and illustrious career. He is as firmly as ever the friend of peace, and especially of peace between Great Britain and America. The eloquent voice which has so often employed the stores of a richly furnished mind in persuasives to international amity has not, as the telegrams suggested, been inflamed by the heat of domestic conflict to the diffusion of discord between kindred peoples. His speech at New York on the 10th of September is, indeed, heavy with charges against France and England. But it is an appeal for justice, not an incentive to strife. It is a complaint of hopes disappointed, of friendship withheld, of errors hastily adopted and obstinately maintained. It is, however, an argument which does honor even to those against whom it is urged, and which aims to establish future relations of the closest

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alliance. Senator Sumner's chief reproach is this, — that we have acted unworthily of ourselves, unfaithfully to our deepest convictions and best memories. . . . .

"There runs through the whole of Mr. Sumner's gigantic oration — far too long to have been spoken as printed, but yet without a word of superfluous argument or declamation — an idea on which we can now only touch. From the first sentence to the last, Slavery is present to his mind. It colors all his reasoning. It inspires him to prodigious eloquence. Not merely as the Senator for Massachusetts, the honored chieftain of the political Abolitionists, but as Chairman of the Committee on Foreign Relations, he sees everywhere the presence of the Slave Power. Against it he invokes, in periods of classic beauty and of fervid strength, all the moral forces of the mother country. To England he makes a passionate and pathetic appeal — more for her own sake than that of the slave, more for the sake of the future than of present effects — that she withdraw all favor and succor from Rebel slave-owners."

The *Northern Whig*, of Belfast, Ireland, noticed especially the statement on *ocean* belligerence : —

"One point, however, on which Mr. Sumner dwells, is of such urgent present importance as to make the reproduction of his remarks, at such length as our space allows, desirable. We refer to his criticism of the claims of the Confederates to belligerent rights *at sea*. Whether the ground which Mr. Sumner takes on this question be or be not tenable, whether the authorities and examples by which he supports it really make out his case, is a matter not to be decided summarily. His argument is, beyond dispute, a most masterly one, and deserves the careful attention of the English Government and its legal advisers, and will, no doubt, engage the ingenuity of writers upon International Law."

These expressions of opinion show something of the extent to which Mr. Sumner was sustained, and also the British criticism he encountered. To the latter must be added an unexpected episode.

Earl Russell was on a visit to Scotland when Mr. Sumner's speech arrived. Being entertained at a public dinner in the Town-Hall of Blairgowrie, September 26th, he took that occasion to review the questions of the war, and especially to answer Mr. Sumner, thus making a new precedent. It is not known that any European statesman ever before made a speech criticizing a speech in another country. The part relating to us was approached by the remark, "I am speaking of what has occurred in what a few years ago were the United States of America"; and then, towards the end, he says, "The people of what were the United States, whether they are called Federals or Confederates."

The following passages belong to this answer.

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"It was impossible to look on the uprising of a community of five million people as a mere petty insurrection ['*Hear! hear!*'], or as not having the rights which at all times are given to those who, by their numbers and importance, or by the extent of the territory they possess, are entitled to these rights. [*Cheers.*] Well, it was said we ought not to have done that, because they were a community of Slaveholders.

"Gentlemen, I trust that our abhorrence of Slavery is not in the least abated or diminished. [*Loud and prolonged cheers.*] For my own part, I consider it one of the most horrible crimes that yet disgrace humanity. [*Cheers.*] But then, when we are treating of the relations which we bear to a community of men, I doubt whether it would be expedient or useful for humanity that we should introduce that new element of declaring that *we will have no relations with a people who permit Slavery to exist among them. We have never adopted it yet, we have not adopted it in the case of Spain or Brazil, and I do not believe that the cause of humanity would be served by our adoption of it.* ['*Hear! hear!*']

"Well, then it was said that these Confederate States were Rebels,—Rebels against the Union. Perhaps, Gentlemen, I am not so nice as I ought to be on the subject. But I recollect that we rebelled against Charles the First [*a laugh*], we rebelled against James the Second, and the people of New England, not content with these two rebellions, rebelled against George the Third. ['*Hear!*' *and laughter.*] .... But, certainly, if I look to the declarations of those New England orators,—and I have been reading lately, if not the whole, yet a very great part, of the very long speech by Mr. Sumner on the subject, delivered at New York,—I own, I cannot but wonder to see these men, the offspring, as it were, of three rebellions, as we are the offspring of two rebellions, really speaking, like the Czar of Russia, the Sultan of Turkey, or Louis the Fourteenth himself, of the dreadful crime and guilt of rebellion. [*Loud laughter and cheers.*] ....

"I said, that in America, although there were some of the local courts which had not the authority of such men as Lord Stowell and Sir William Grant, yet there was a Court of Appeal, there was a Supreme Court, in the United States, which contained, and had for many years contained, men as learned and of as high reputation in the law and of as unsullied reputation for integrity as any that have sat in our English courts of justice, and that we ought to wait patiently for the decision of those tribunals. Now what is my surprise to find, and what would be your surprise to find, that Mr. Sumner is so prejudiced that he brings these declarations of mine against me, saying *that I have diminished the reputation of the American Courts*, and that I showed myself biased against the Federal States, by the declaration I then made in Parliament! [*A gentleman from the Southern States among the company here ejaculated, 'He is not to be believed.'*]

"I will not detain you further on these subjects; but one remark I must make on the general tendency of these speeches and writings in America. The Government of America discusses these matters very fairly with the English Government. Sometimes we think them quite in the wrong; some-

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times they say we are quite in the wrong; but we discuss them fairly, and with regard to the Secretary of State I see no complaint to make. I think he weighs the disadvantages and difficulties of our situation in a very fair and equal balance. But there are others, and Mr. Sumner is one of them, his speech being an epitome almost of all that has been contained in the American press, by whom our conduct is very differently judged."

In defending the concession of belligerent rights to Rebel Slavery, Earl Russell forgot two things: first, that the Rebels, whatever their numbers, were without ports or Prize Courts, and therefore unable to administer justice on the ocean, which was essential to the protection of neutrals, and, in the nature of things, the condition precedent of any such concession; and, secondly, he forgot, that, whatever might be the traditional relations with existing nations "permitting Slavery to exist among them," it was now proposed, for the first time in history, to recognize a rebel community seeking to found a new nation whose declared corner-stone was Slavery, which Mr. Sumner insisted was contrary to good morals and the Antislavery principles so constantly and loftily avowed by England.

On another occasion Earl Russell seems to have laid down a rule requiring Prize Courts, as will be seen in Mr. Sumner's speech.[1] He insisted that vessels seized should be tried in a Prize Court. If this rule is correct, how vindicate the award of belligerent rights to a community without Prize Courts? Another question may also be asked: If Slavery be, as Earl Russell declared, "one of the most horrible crimes that yet disgrace humanity," how could England make any concession to Rebels whose single declared object of separate existence was this very crime?

The answer to Mr. Sumner on Prize Courts will be appreciated after reading the report in the London *Times*, June 16, 1863,[2] of what Earl Russell actually said in the House of Lords.

"With regard to the decisions in Prize Courts, I must say I lament that the Constitution of the United States is such, that, instead of being brought at once before the Court of Admiralty, where generally you have a very eminent judge to preside, perfectly well acquainted with the Law of Nations, *such cases go in the first instance before the District Courts*, then, I think, before a Circuit Court, and it is only after a considerable delay that they come before the Supreme Court of the United States. I say this, because I believe we should all very much respect a decision of the Supreme Court of the United States, and it is to be lamented that there should be a considerable delay before the judgment of that tribunal can be obtained."

[1] *Ante*, p. 457.

[2] See, also, Hansard's Parliamentary Debates, 3d Ser., Vol. CLXXI. col. 882, 883.

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The compliment to the Supreme Court of the United States, which, like the House of Lords and the Privy Council, is not a court of original jurisdiction in prize cases, will hardly excuse the reflection upon the District Courts, which are the Admiralty Courts of the United States, — especially when it is considered that those at Boston and New York, where the prize cases chiefly occurred, were administered at the time by judges who would compare favorably with the contemporary judge of the English Admiralty. Judge Sprague, of Boston, and Judge Betts, of New York, were "very eminent" and "perfectly well acquainted with the Law of Nations," although only judges of District Courts.

The speech of Earl Russell was noticed by Mr. Adams, in a despatch to Mr. Seward, under date of October 1, 1863 : —

"The event of the week has been the speech of Earl Russell at Blairgowrie, evidently drawn forth by the report of Mr. Sumner's address at New York." [1]

It was the subject of comment by the press of England and the United States. The sympathetic *Morning Star* said : —

"Mr. Sumner's oration has had an unexpected effect. It has stirred the phlegmatic nature of Earl Russell. The Foreign Secretary has replied from his Scottish retreat to the complaints and reproaches of the New England Senator. Absurdly contemptuous in his personal allusions to the distinguished Senator, Lord Russell confesses the force of his accusations by taking the trouble to reply to them. . . . .

"It would also have been well, if our Foreign Secretary had included in his reply some notice of one of the most distinct and gravest of Mr. Sumner's complaints. The defence of our recognition of the Confederates as belligerents is without novelty. It is a simple repetition of the old statement, that our naval commanders required to be instructed whether they should respect the new flag or treat it as that of a pirate. Lord Russell does not touch the objection raised by Mr. Sumner, that the Confederates had no ocean navy, and could provide one only from neutral ports. Neither does his Lordship explain why the resolution to recognize the Confederates as belligerents was taken in the absence from this country of a Federal minister.

"But, notwithstanding these defects, Lord Russell's speech at Blairgowrie is an immense advance upon his previous utterances on the American Question. It is evident that he begins to perceive the real issue of the conflict, and rightly estimates the direction of British sentiment."

The Boston *Traveller* said : —

"Earl Russell has fallen into several grave errors in the course of his re-

[1] Papers relating to Foreign Affairs, 1862-63, Part I. p. 434.

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marks. He has utterly misconceived the whole temper of Mr. Sumner's speech, when he says that 'it weighs the difficulties of the English Government in an unequal balance,' and that it is 'an epitome of almost all that has been contained by the press of America' on the subject of the ill-feeling against Great Britain and her neutrality, so generally prevalent among us. The feeling evoked by the belligerent articles of the New York *Herald* is one of far different character from that produced by Mr. Sumner's remarks. Lord Russell charges him with injustice to the English people. Had he read the speech to which he professes to reply with more care, there would have been found no ground to sustain such a charge."

In France the speech of Mr. Sumner was published in an abridged form, under the following title: —

"Les Relations Extérieures des États-Unis. Préface et Traduction abrégée par A. Malespine [of the *Opinion Nationale*]. Paris, 1863." 31 pp. 8vo.

The eminent historian, Henri Martin, writing in the *Siècle* on American affairs, alluded to the speech.

"We will not close these considerations without recommending to the readers of the *Siècle* the eloquent appeal addressed to public opinion by one of the greatest citizens of the United States, Charles Sumner, Chairman of the Committee of Foreign Relations in the American Senate. The French translation of this discourse on the *Foreign Relations of the United States* has just appeared. He treats here the question of foreign intervention in fact and in right, demonstrates in a victorious manner, according to our opinion, that the South had not the title to be admitted as a belligerent, and considers it impossible that France and England can recognize a political society founded on Slavery. We think to-day the cause gained. Neither the sons of '89 nor the country of Wilberforce will have this stain on their history."

These various testimonies at home and abroad, where criticism is not wanting, show that Mr. Sumner did not speak in vain. Evidently he obtained a hearing for the national cause.

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OUR DOMESTIC RELATIONS: POWER OF CONGRESS OVER THE REBEL STATES.

ARTICLE IN THE ATLANTIC MONTHLY, OCTOBER, 1863.

THIS argument was prepared as a speech on the resolutions of February 11, 1862, entitled "State Rebellion State Suicide, Emancipation and Reconstruction"; but the tardy success of our arms and the press of business caused its postponement, until, during the recess of Congress, it was thought best to print it as an article in the *Atlantic Monthly*. It was much discussed. Hon. Montgomery Blair, at the time a member of the Cabinet, in a speech at Rockville, Maryland, October 3d, replied to it at length, insisting that it was "the key-note of the revolution," — "the programme of the movement," — presenting "the issue on which the Abolition party has resolved to rest its hopes of setting up its domination in this country"; and in opposition to this "programme" he placed "that which is presented by President Lincoln," alleging that Mr. Sumner had directly arrayed himself against the President on a question of fundamental policy in the conduct of the war. The *National Intelligencer*, at Washington, in an elaborate leader, sustained the position of Mr. Blair.

From this time forward, the discussion proceeded in the press, in public meetings, and in Congress, followed by the measures of Reconstruction, including especially the requirement by Congress of the colored suffrage in the reorganization of the Rebels and in their new Constitutions,[1] all of which assumed the power of Congress.

AT this moment our domestic relations all hinge upon one question, — How to treat the Rebel States. No patriot citizen doubts the triumph of our arms in

[1] Act of March 2, 1867: Statutes at Large, Vol. XIV pp. 428, 429.

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the suppression of the Rebellion. Early or late triumph is inevitable, — perhaps by sudden collapse of the bloody imposture, or perhaps by slower and more gradual surrender. For ourselves, we are prepared for either alternative, and shall not be disappointed, if constrained to wait yet a little longer; but when the day of triumph comes, political duties will take the place of military. The victory won by our soldiers must be assured by wise counsels, so that its hard-earned fruits shall not be lost.

The relations of the States to the National Government must be carefully considered, — not too boldly, not too timidly, — that we may understand in what way or by what process *the transition from Rebel forms may be most surely accomplished.* If I do not greatly err, it will be found that the powers of Congress, thus far so effective in raising armies and supplying moneys, will be important, if not essential, in fixing the conditions of perpetual peace. But there is one point on which there can be no question. The dogma and delusion of State Rights, as mischievously interpreted, which did so much for the Rebellion, must not be allowed to neutralize all that our arms have gained.

Already, in a remarkable instance, the President has treated the pretension of State Rights with proper indifference. Quietly and without much discussion, he has constituted military governments in the Rebel States, with governors nominated by himself: all of which testifies against the old delusion. Strange will it be, if this extraordinary power, amply conceded to the President, is denied to Congress. Practically, the whole question is opened here. Therefore to this aspect of it I ask your first attention.

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Already four military governors have been appointed: one for Tennessee, one for South Carolina, one for North Carolina, and the other for Louisiana. So far as known, the appointment of each was by simple letter from the Secretary of War. But if this can be done in four States, where is the limit? It may be done in every Rebel State; and if not in every other State of the Union, it will be simply because the existence of a valid State government excludes the exercise of this extraordinary power. Assuming, that, as our arms prevail, it will be done in every Rebel State, we shall then have *eleven* military governors, all deriving authority from one source, ruling a population amounting to upwards of nine millions. And this imperatorial dominion, indefinite in extent, will also be indefinite in duration; for, if, under the Constitution and laws, it be proper to constitute such governors, it is clear that they may be continued without regard to time, — for years, if you please, as well as for weeks; and the whole region they are called to sway will be a military empire, with all powers, executive, legislative, and even judicial, derived from one man in Washington. Talk of "the one-man power!" Here it is with a vengeance. Talk of military rule! Here it is, in the name of a republic.

The bare statement of this case may put us on our guard. We may well hesitate to organize a single State under military government, when we see where such step leads. If you approve one, you must approve eleven, and the National Government may crystallize into military despotism.

In appointing military governors of States, we follow an approved example in certain cases beyond the jurisdiction of the National Constitution, — as in California

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and Mexico, after their conquest, and before peace. It is evident that in these cases there was no constraint from the Constitution, and we were perfectly free to act according to the assumed exigency. It may be proper to set up military governors for a conquered country beyond our civil jurisdiction, and yet it may be questionable if we should undertake to set up such governors in States that we all claim to be within our civil jurisdiction. At all events, the two cases are different, so that it is not easy to argue from one to the other.

In Jefferson's Inaugural Address, where he develops what he calls "the essential principles of our Government, and consequently those which ought to shape its administration," he mentions "*the supremacy of the civil over the military authority*" as one of these "essential principles," and then says: —

"These should be the creed of our political faith, the text of civil instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety."[1]

Undertaking to create military governors of States, we reverse the policy of the Republic, as solemnly declared by Jefferson, and subject the civil to the military authority. If this has been done in patriotic ardor, without due consideration, in a moment of error or alarm, it only remains, that, according to Jefferson, we should "hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety."

There is nothing new under the sun, and the military

[1] Writings, Vol. VIII. p. 5.

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governors we are beginning to appoint find a prototype in the Protectorate of Oliver Cromwell. After the execution of the King and the establishment of the Commonwealth, the Protector conceived the idea of parcelling the kingdom into military districts, of which there were *eleven*, being precisely the number now proposed, under favor of success, among us. Of this system a great authority, Mr. Hallam, speaks thus: —

"To govern according to law may sometimes be an usurper's wish, but can seldom be in his power. The Protector abandoned all thought of it. Dividing the kingdom into districts, he placed at the head of each a major-general, as *a sort of military magistrate*, responsible for the subjection of his prefecture. These were *eleven in number*, men bitterly hostile to the royalist party, and insolent towards all civil authority."[1]

Carlyle, in his Life of Cromwell, gives a glimpse of this military government.

"The beginning of a universal scheme of Major-Generals, the Lord Protector and his Council of State having well considered and found it the feasiblest, — 'if not *good*, yet best.' .... 'It is an arbitrary government,' murmur many. Yes, arbitrary, but beneficial. *These are powers unknown to the English Constitution, I believe; but they are very necessary for the Puritan English nation at this time.*"[2]

Perhaps no better words could be found in explanation of the Cromwellian policy adopted by our President.

A contemporary republican, Lieutenant-General Ludlow, whose "Memoirs" add to the authentic history of

[1] Constitutional History of England (London, 1850), Vol. I. p. 668.
[2] Oliver Cromwell's Letters and Speeches, Part IX. May 28, 1655.

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those interesting times, characterizes these military magistrates as so many "bashaws." Here are some of his words: —

"The major-generals carried things with unheard-of insolence in their several precincts, decimating to extremity whom they pleased, and interrupting the proceedings at law upon petitions of those who pretended themselves aggrieved; *threatening such as would not yield a ready submission to their orders with transportation to Jamaica, or some other plantations in the West Indies.*"[1]

Again, says the same contemporary writer, —

"There were sometimes bitter reflections cast upon the proceedings of the major-generals by the lawyers and country gentlemen, who accused them to have done many things oppressive to the people, in interrupting the course of the law, *and threatening such as would not submit to their arbitrary orders with transportation beyond the seas.*"[2]

At last, even Cromwell, at the height of his power, found it necessary to abandon the policy of military governors. He authorized his son-in-law, Mr. Claypole, to announce in Parliament, "that he had formerly thought it necessary, in respect to the condition in which the nation had been, that the major-generals should be intrusted with the authority which they had exercised; but, in the present state of affairs, he conceived it inconsistent with the laws of England and liberties of the people to continue their power any longer."[3]

The conduct of at least one of our military magistrates seems to have been a counterpart to that of these

[1] Memoirs of Edmund Ludlow (London, 1751), p. 213.
[2] Ibid., p. 221.
[3] Ibid., pp. 221, 222.

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"bashaws" of Cromwell; and there is no argument against that early military despotism which may not be urged against any attempt to revive it in our day. Some of the acts of Governor Stanly in North Carolina are in themselves an argument against the whole system.

It is clear that these military magistrates are without direct sanction in the Constitution or existing laws. They are not even "major-generals," or other military officers, charged with the duty of enforcing martial law, but special creations of the Secretary of War, acting under the President, and charged with universal powers. As governors within the limits of a State, they obviously assume the extinction of the old State governments for which they are substituted, and the President, in appointing them, assumes a power over these States kindred to his acknowledged power over Territories of the Union; but, in appointing governors for Territories, he acts in pursuance of the Constitution and laws, by and with the advice and consent of the Senate.

That the President should assume the vacation of the State governments is of itself no argument against the creation of military governors, for it is simply the assumption of an unquestionable fact; but if it be true that the State governments have ceased to exist, then the way is prepared for the establishment of provisional governments by Congress. In short, if a new government is to be supplied, it should be by Congress rather than by the President, and it should be according to established law rather than according to the mere will of any functionary, to the end that ours may be "a government of laws, and not of men."

There is no argument for military governors which is

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not equally strong for Congressional governments, while the latter have in their favor two controlling considerations: first, that they proceed from the civil rather than the military power; and, secondly, that they are created by law. Therefore, in considering whether Congressional governments should be constituted, I begin by assuming everything in their favor that is already accorded to the other system. I should not do this, if the system of military dictators were not now recognized; so that the question is sharply presented, which of the two to choose. Even if provisional governments by Congress are unconstitutional, it does not follow that military governments, without the sanction of Congress, can be constitutional. But, on the other hand, I cannot doubt, that, if military governments are constitutional, then surely the provisional governments by Congress must be so also. In truth, there can be no opening for military governments which is not also an opening for Congressional governments, with this great advantage for the latter, that they are in harmony with our institutions, which favor the civil rather than the military power.

Thus declaring deliberate preference for Congressional governments, I am sustained by obvious reason. But there is positive authority on this identical question. I refer to the recorded opinion of Chancellor Kent.

"Though the Constitution vests the executive power in the President, and declares him to be commander-in-chief of the army and navy of the United States, *these powers must necessarily be subordinate to the legislative power in Congress.* It would appear to me to be the policy or true construction of this simple and general grant of executive power to the President, not to suffer it to interfere with those specific

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powers of Congress which are more safely deposited in the legislative department, and that *the powers thus assumed by the President do not belong to him, but to Congress.*" [1]

Such is the weighty testimony of this esteemed master on the assumption of power by the President, in 1847, over Mexican ports in our possession. It is found in the latest edition of his "Commentaries" that enjoyed the supervision of the author. Of course, it is equally applicable to the recent assumptions within our own territory. His judgment is clear in favor of Congressional governments.

In ordinary times, and under ordinary circumstances, neither system of government would be valid. A State in the full enjoyment of its rights would spurn a military governor or a Congressional governor. It would insist that its governor should be neither military nor Congressional, but such as its own people chose to elect; and nobody would question this right. The President does not think of sending a military governor to New York; nor does Congress think of establishing a provisional government in that State. It is only with regard to the Rebel States that this question arises. The occasion, then, for the exercise of this extraordinary power is found in the Rebellion. Without the Rebellion there would be no talk of any governor, whether military or Congressional.

Here it becomes important to consider the operation of the Rebellion in opening the way to this question. To this end we must understand the relations between the States and the National Government, under the Constitution of the United States. As I approach this

[1] Commentaries on American Law (6th edit., 1848), Vol. I. p. 92, note *a*.

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question of singular delicacy, let me say on the threshold, that for all those rights of the States which are consistent with the peace, security, and permanence of the Union, according to the objects grandly announced in the Preamble of the Constitution, I am the strenuous advocate at all times and places. Never, through any word or act of mine, shall those rights be impaired; nor shall any of those other rights be called in question by which the States are held in harmonious relations as well with each other as with the Union. But, while thus strenuous for all that justly belongs to the States, I cannot concede to them immunities inconsistent with that Constitution which is the supreme law of the land; nor can I admit the impeccability of a State.

From a period even anterior to the National Constitution, there has been a perverse pretension of State Rights, which has perpetually interfered with the unity of our Government. Throughout the Revolution this pretension was a check upon the powers of Congress, whether in respect to armies or finances, so that it was too often constrained to content itself with the language of advice or persuasion rather than of command. By the Declaration of Independence it was solemnly declared that "these United Colonies are, and of right ought to be, free and independent *States*," and that, as such, "they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent *States* may of right do." Thus, by this original charter, the early Colonies were changed into independent States, under whose protection the liberties of the country were placed.

Early steps were taken to supply the deficiencies of this government, which was effective only through the

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generous patriotism of the people. In July, 1778, two years after the Declaration, Articles of Confederation were ratified by nine States, but the assent of all was not obtained till March, 1781. The character of this new government, which assumed the style of "The United States of America," appears in the title of these Articles, which was as follows: "Articles of Confederation and Perpetual Union *between the States* of New Hampshire, Massachusetts Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia." By the second article it was declared that "*each State retains its sovereignty*, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled." By the third article it was further declared that "the said *States* hereby severally enter into *a firm league* of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare." By another article, a "committee of the *States*, or any nine of them," was authorized, in the recess, to execute the powers of Congress. The government thus constituted was a compact between *sovereign States*, or, according to its precise language, "a firm league of friendship" between these *States*, administered, in the recess of Congress, by a "committee of *the States*." Thus did State Rights triumph.

But the imbecility of the Confederation, from this pretension, soon became apparent. As early as December, 1782, a committee of Congress made an elaborate report on the refusal of Rhode Island, one of the States, to confer certain powers on Congress with regard to

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revenue and commerce. In April, 1783, an Address of Congress to *the States* was put forth, appealing to their justice and plighted faith, and representing the consequence of failure on their part to sustain the Government and provide for its wants. In April, 1784, a similar appeal was made to what were called "the several States," whose Legislatures were recommended to vest "the United States in Congress assembled" with certain powers. In July, 1785, a committee of Congress made another elaborate report on the reason why the States should confer upon Congress powers therein enumerated, in the course of which it was urged, that, "unless *the States* act together, there is no plan of policy into which they can separately enter which they will not be separately interested to defeat, and of course all their measures must prove vain and abortive." In February and March, 1786, there were three other reports of committees of Congress, exhibiting the failure of *the States* to comply with the requisitions of Congress, and the necessity for a complete accession of *all the States* to the revenue system. In October, 1786, there was still another report, most earnestly renewing the former appeals to *the States*. Nothing could be more urgent.

As early as July, 1782, even before the first report to Congress, resolutions were adopted by the State of New York, declaring "that the situation of *these States* is in a peculiar manner critical," and that "the radical source of most of our embarrassments is *the want of sufficient power in Congress* to effectuate that ready and perfect coöperation of *the different States* on which their immediate safety and future happiness depend."[1] Finally, in September, 1786, at Annapolis, commissioners

[1] Journal of the Assembly of New York, July 21, 1782.

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from several States, after declaring "the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy," recommended the meeting of a Convention "to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union." In accord with this recommendation, the Congress of the Confederation proposed a Convention "for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union."

In pursuance of the call, delegates to the proposed Convention were duly appointed by the Legislatures of the several States, and the Convention assembled at Philadelphia in May, 1787. The present Constitution was the well-ripened fruit of their deliberations. In transmitting it to Congress, General Washington, who was the President of the Convention, in a letter, bearing date September 17, 1787, uses this instructive language: —

"It is obviously impracticable, in the Federal Government of *these States, to secure all rights of independent sovereignty to each*, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be

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surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference *among the several States* as to their situation, extent, habits, and particular interests. In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, THE CONSOLIDATION OF OUR UNION, in which is involved our prosperity, felicity, safety, perhaps our national existence."

These famous words were in harmony with the constant sentiments of Washington. Here is additional evidence, from a letter to John Jay, during the summer of 1786: —

"We have errors to correct. We have probably had too good an opinion of human nature, in forming our Confederation. Experience has taught us that men will not adopt and carry into execution measures the best calculated for their own good, *without the intervention of a coercive power.* I do not conceive we can exist long as a nation without having lodged somewhere a power which will pervade the whole Union *in as energetic a manner as the authority of the State governments extends over the several States.*"

These are the words of Washington; and he then proceeds: —

"To be fearful of investing Congress, constituted as that body is, with ample authorities for national purposes, appears to me the very climax of popular absurdity and madness."[1]

The Constitution was duly transmitted by Congress to the several Legislatures, by which it was submitted to Conventions of delegates "chosen in each State by

[1] August 1, 1786: Writings of Washington, ed. Sparks, Vol. IX. pp. 187, 188.

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the people thereof," who ratified the same. Afterwards, Congress, by resolution, dated September 13, 1788, setting forth that the Convention had reported "a Constitution *for the people of the United States,*" which had been duly ratified, proceeded to authorize the necessary elections under the new government.

The Constitution, it will be seen, was framed to remove difficulties arising from State Rights. So paramount was this purpose, that, according to the letter of Washington, it was kept steadily in view in all the deliberations of the Convention, which did not hesitate to declare *the consolidation of our Union* essential to prosperity, felicity, safety, and perhaps national existence.

The unity of the Government was expressed in the term "Constitution," instead of "Articles of Confederation and Perpetual Union between the States," and in the idea of "a more perfect union," instead of "a firm league of friendship." It was also announced emphatically in the Preamble:—

"*We, the people of the United States, in order to form a more perfect union,* establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Not "we, the States," but "we, the people of the United States." Such is the beginning and origin of our Constitution. Here is no compact or league between States, involving the recognition of State Rights, but a government ordained and established by the people of the United States for themselves and their posterity.

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This government is not established *by the States*, nor is it established *for the States;* but it is established *by the people*, for themselves and their posterity. It is true, that, in the organization of the government, the existence of the States is recognized, and the original name of "United States" is preserved; but the sovereignty of the States is absorbed in that more perfect union which was then established. There is but one sovereignty recognized, and this is the sovereignty of the United States. To the several States is left that specific local control which is essential to the convenience and business of life, while to the United States, as Plural Unit, is allotted that commanding sovereignty which embraces and holds the whole country within its perpetual and irreversible jurisdiction.

This obvious character of the Constitution did not pass unobserved at the time of its adoption. Indeed, the Constitution was most strenuously opposed on the ground that the States were absorbed in the Nation. In the debates of the Virginia Convention, Patrick Henry protested against consolidated power.

"And here I would make this inquiry of those worthy characters who composed a part of the late Federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated Government, instead of a Confederation. *That this is a consolidated Government is demonstrably clear;* and the danger of such a Government is to my mind very striking. I have the highest veneration for those gentlemen; but, Sir, give me leave to demand, What right had they to say, '*We, the people*'? . . . . Who authorized them to speak the language of '*We, the people*,' instead of '*We, the States*'?"[1]

[1] Elliot's Debates (2d edit.), Vol. III. p. 22.

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And again, at another stage of the debate, the same patriotic opponent of the Constitution declared succinctly, —

"The question turns, Sir, on that poor little thing, the expression, 'We, *the people*,' instead of *the States*, of America." [1]

In the same Convention, another patriotic opponent of the Constitution, George Mason, following Patrick Henry, said: —

"Whether the Constitution be good or bad, the present clause clearly discovers that it is a National Government, and no longer a Confederation." [2]

But against all this opposition, and in face of this exposure, the Constitution was adopted, in the name of the people of the United States. Much, indeed, was left to the States; but it was no longer in their name that the government was organized, while the miserable pretension of State "sovereignty" was discarded. Even in the discussions of the National Convention Mr. Madison spoke thus plainly: —

"Some contend that States are *sovereign*, when, in fact, they are only political societies. The States never possessed the essential rights of sovereignty. These were always vested in Congress." [3]

Grave words, especially when we consider the position of their author. They were substantially echoed by Elbridge Gerry, of Massachusetts, afterwards Vice-President, who said: —

[1] Elliot's Debates (2d edit.), Vol. III. p. 44.
[2] Ibid., p. 29.
[3] Yates's Minutes, June 29, 1787: Ibid., Vol. I. p. 461.

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"It appears to me that the States never were independent. They had only corporate rights."[1]

On another occasion, Mr. Madison said, —

"I hold it for a fundamental point, that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty."[2]

Better words still fell from Mr. Wilson, of Pennsylvania, known afterwards as a learned judge of the Supreme Court, and also for his "Lectures on Law": —

"Will a regard to State Rights justify the sacrifice of the rights of men? If we proceed on any other foundation than the last, our building will neither be solid nor lasting."[3]

The argument was unanswerable then. It is unanswerable now. You cannot elevate the sovereignty of the States over the Constitution of the United States. It would be even more odious than the early pretension of sovereign power over Magna Charta, according to the memorable words of Lord Coke, as recorded by Rushworth: —

"Sovereign power is no Parliamentary word. In my opinion, it weakens Magna Charta and all our statutes; for they are absolute, without any saving of sovereign power; and shall we now add it, we shall weaken the foundation of law, and then the building must needs fall. Take we heed what we yield unto. *Magna Charta is such a fellow that he will have no sovereign.*"[4]

But the Constitution is our Magna Charta, which can

[1] Yates's Minutes, June 29, 1787: Elliot's Debates (2d edit.), Vol. I. p. 464.
[2] Letter to Edmund Randolph, April 8, 1787: Madison Papers, Vol. II. p. 631.
[3] Yates's Minutes, June 30, 1787: Elliot's Debates, Vol. I. p. 467.
[4] Rushworth's Historical Collections, Vol. I. p. 562.

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bear no sovereign but itself, as you will see at once, if you consider its character. And this practical truth was recognized at its formation, as may be seen in the writings of our Rushworth: I refer to Nathan Dane, who was a member of Congress under the Confederation. He tells us plainly, that the terms "sovereign States," "State sovereignty," "State rights," "rights of States," are "not constitutional expressions."[1]

In the exercise of its sovereignty, Congress is intrusted with large and peculiar powers. Take notice of them, and you will see how little of "sovereignty" is left to the States. Their simple enumeration is an argument against this pretension. Congress may "lay and collect taxes, duties, imposts, and excises, to pay the debts and *provide for the common defence and general welfare of the United States*"; it may "borrow money on the credit of the United States"; "regulate commerce with foreign nations, and *among the several States*, and with the Indian tribes"; "establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, *throughout the United States*"; "coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures"; "provide for the punishment of counterfeiting the securities and current coin of the United States"; "establish post-offices and post-roads"; "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries"; "constitute tribunals inferior to the Supreme Court"; "define and punish piracies and felonies committed on the high seas, and offences against the Law

[1] Abridgment of American Law, Appendix to Vol. IX. p. 10.

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of Nations"; "declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water"; "raise and support armies"; "provide and maintain a navy"; "make rules for the government and regulation of the land and naval forces"; "provide for calling forth the militia to execute *the laws of the Union*, suppress insurrections, and repel invasions"; "provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia *according to the discipline prescribed by Congress*"; "exercise exclusive legislation, in all cases whatsoever, over the seat of the government of the United States, and like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings"; and "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

Such are the ample and diversified powers of Congress, embracing all those agencies which enter into sovereignty. With this concession to the United States, there seems to be little for the several States. In the power to "declare war" and to "raise and support armies" Congress possesses an exclusive power, in itself immense and infinite, over persons and property in the several States, while, by the power to "regulate commerce," it may put limits round about the business of the several States; and even in the case of the militia,

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which is the original military organization of the people, nothing is left to the States except "the appointment of the officers," and the authority to train it "according to the discipline *prescribed by Congress.*" Thus these great functions are all intrusted to the United States, while the several States are subordinated to their exercise.

Constantly, and in everything, we behold the constitutional subordination of the States. But there are other provisions by which the States are expressly deprived of important powers. For instance: "No State shall enter into any treaty, alliance, or confederation; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts." Or, if the States may exercise certain powers, it is only with the consent of Congress. For instance: "No State shall, *without the consent of Congress,* lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power." Here is a magistral power accorded to Congress utterly inconsistent with the pretensions of State Rights. Then again: "No State shall, *without the consent of the Congress,* lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States; *and all such laws shall be subject to the revision and control of the Congress.*" Here, again, is a similar magistral power accorded to Congress; and as if still further to deprive the States of their much vaunted sovereignty, the laws which they make with the consent of Congress are expressly declared to

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be subject "to the revision and control of the Congress." There is still another instance. According to the Constitution, "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State"; but here mark the controlling power of Congress, which is authorized to "prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

There are five other provisions of the Constitution by which its supremacy is positively established. (1.) "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." As Congress has the exclusive power to establish "an uniform rule of naturalization," it may, under these words of the Constitution, secure for its newly entitled citizens "all privileges and immunities of citizens in the several States," in defiance of State Rights. (2.) "New States may be admitted *by the Congress* into this Union." According to these words, the States cannot even determine their associates, but are dependent in this respect upon the will of Congress. (3.) Not content with taking from the States these important functions of sovereignty, it is solemnly declared that the Constitution, and the laws of the United States made in pursuance thereof, and all treaties under the authority of the United States, "SHALL BE THE SUPREME LAW OF THE LAND, — *anything in the Constitution or laws of any State to the contrary notwithstanding.*" Thus are State Rights again subordinated to the National Constitution, which is erected into the paramount authority. (4.) This is done again by another provision, which declares that "*the members of the several State Legislatures*, and all executive and judicial officers both of the United States and of *the several*

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States, shall be bound by oath or affirmation to support this Constitution"; so that not only State laws are subordinated to the National Constitution, but the makers of State laws and all other State officers are constrained to declare allegiance to this Constitution, thus placing the State, alike through its acts and its agents, in complete subordination to the sovereignty of the United States. (5.) This sovereignty is further proclaimed in the solemn injunction, that "the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion." Here are duties of guaranty and protection imposed upon the United States, by which their position is fixed as the supreme power. There can be no such guaranty without the implied right to examine and consider the governments of the several States, and there can be no such protection without a similar right to examine and consider the condition of the several States, subjecting them to the rightful supervision and superintendence of the National Government.

Thus, whether we regard the large powers vested in Congress, the powers denied to the States absolutely, the powers denied to the States without the consent of Congress, or those other provisions which accord supremacy to the United States, we find the pretension of State sovereignty without foundation, except in the imagination of its partisans. Before the Constitution such sovereignty may have existed; it was declared in the Articles of Confederation; but since then it has ceased. It has disappeared and been lost in the supremacy of the National Government, so that it can no longer be recognized. Perverse men, insisting that it still existed,

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and weak men, mistaking the shadow of former power for the reality, have made arrogant claims in its behalf. When the Constitution was proclaimed, and George Washington took his oath to support it as President, our career as a nation began, with all the unity of a nation. The States remained as living parts of the body, important to the national strength, and essential to those currents which maintain national life, but plainly subordinate to the United States, which then and there stood forth a nation, one and indivisible.

The new Government had hardly been inaugurated before it was disturbed by the pestilent pretension of State Rights, which has never ceased to disturb it since. Discontent with the treaty between the United States and Great Britain, negotiated by that purest patriot, John Jay, under instructions from Washington, in 1794, led Virginia, even at that early day, to commence an opposition to its ratification, *in the name of State Rights*. Shortly afterwards appeared the famous resolutions of Virginia and of Kentucky, usually known as the "Resolutions of '98," declaring that the National Government was founded on compact between the States, and claiming for the States the right to sit in judgment on the National Government, and to interpose, if they thought fit: all this, as you will see, *in the name of State Rights*. This pretension increased, till, at last, on the mild proposition to attach a prospective prohibition of Slavery as a condition to the admission of Missouri into the Union as a new State, the opposition raged furiously, even to the extent of menacing the existence of the Union; and this, too, was done *in the name of State Rights*. Ten years later the pretension took the famous form

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of Nullification, insisting that the National Government was only a compact of States, any one of which was free to annul an Act of Congress at its own pleasure; and all this *in the name of State Rights.* For a succession of years afterwards, — at the presentation of petitions against Slavery, petitions for the recognition of Hayti, at the question of Texas, at the Wilmot Proviso, at the admission of California as a Free State, at the discussion of the Compromises of 1850, at the Kansas Question,— the Union was menaced; and always *in the name of State Rights.* The menace was constant; and it sometimes showed itself on small as well as great occasions, but always *in the name of State Rights.* When it was supposed that Fremont was about to be chosen President the menace became louder, and mingling with it was the hoarse mutter of war; and all this audacity was *in the name of State Rights.*

But in the autumn of 1860, on the election of Abraham Lincoln, the case became much worse. Scarcely was the result known by telegraph, before the country was startled by other intelligence, to the effect that certain States at the South were about to put in execution the long pending threat of Secession, of course *in the name of State Rights.* First came South Carolina, which, by Ordinance adopted in a State Convention, undertook to repeal the original Act by which the Constitution was adopted in this State, and to declare that South Carolina had ceased to be one of the States of the Union. At the same time a Declaration of Independence was put forth by the State, which proceeded to organize as an independent community. This example was followed successively by other States, which, by formal Acts of Secession, undertook to dissolve relations

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with the Union, always, be it understood, *in the name of State Rights.* A new Confederation was formed by these States, with a new Constitution, and Jefferson Davis at its head; and the same oaths of loyalty by which the local functionaries of all these States had been bound to the Union were now transferred to this new Confederation, of course in utter violation of the Constitution of the United States, but always *in the name of State Rights.* The Ordinances of Secession were next maintained by war, which, beginning with the assault upon Fort Sumter, convulsed the whole country, till, at last, all the States of the new Confederation were in open rebellion, which the Government of the United States is now exerting its energies, mustering its forces, and taxing its people to suppress. The original claim, *in the name of State Rights,* has swollen to all the proportions of an unparalleled war, which, *in the name of State Rights,* now menaces the national life.

The pretensions in the name of State Rights are not all told. While the Ordinances of Secession were maturing, and before they were yet consummated, Mr. Buchanan, who was then President, declined to interfere, on the ground that what had been done was by States, and that it was contrary to the theory of our Government "to coerce a State," thus making the pretension of State Rights the apology for imbecility. Had the President then interfered promptly and loyally, it cannot be doubted that this whole intolerable crime might have been trampled out forever. And now, when it is proposed that Congress shall organize governments in these States, which are absolutely without loyal governments, we are met by the objection founded on State Rights. The same disastrous voice which from the

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beginning of our history has sounded in our ears still makes itself heard; but, alas! it is now on the lips of friends. Just in proportion as it prevails, it is impossible to establish the Constitution again throughout the Rebel States. State Rights are fully triumphant, if, first, in their name Rebel governments can be organized, and then again in their name Congressional governments to replace the Rebel governments can be resisted. If they can be employed, first to sever the States from the Union, and then to prevent the Union from extending its power over them, State Rights are at once sword and buckler to the Rebellion. It was through the imbecility of Mr. Buchanan that the States were allowed to use the sword: God forbid that now, through any similar imbecility of Congress, they shall be allowed to use the buckler!

And here we are brought to the practical question destined to occupy so much of public attention. It is proposed to bring the action of Congress to bear directly upon the Rebel States. This may be by the establishment of provisional governments under authority of Congress, or simply by making the admission or recognition of the States depend upon the action of Congress. The essential feature of the proposition is, *that Congress shall assume jurisdiction of the Rebel States.* A bill authorizing provisional governments in these States was introduced into the Senate by Mr. Harris, of the State of New York, and was afterwards reported from the Judiciary Committee of that body; but it was left with unfinished business, when the late Congress expired on the fourth of March. The opposition to this proposition, so far as I understand it, assumes two forms: first, that

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these States are always to be regarded as States, with much vaunted State Rights, and therefore cannot be governed by Congress; and, secondly, that, if any government is to be established over them, it must be simply a military government, with a military governor appointed by the President, as is the case with Tennessee and North Carolina. But State Rights are as much disturbed by a military government as by a Congressional government. The local government is as much set aside in one case as in the other. If the President, within State limits, can proceed to organize a military government to exercise all the powers of the State, surely Congress can proceed to organize a civil government within the same limits for the same purpose; nor can any pretension of State Rights be effective against Congress more than against President. Indeed, the power belongs to Congress by a higher title than it belongs to President: first, because a civil government is more in harmony with our institutions, and, wherever possible, is required; and, secondly, because there are provisions of the Constitution under which this power is clearly derived.

Assuming, then, that the pretension of State Rights is as valid against one form of government as against the other, and still further assuming, that, in the case of military governments, this pretension is practically overruled by the President at least, we are brought again to consider its efficacy when advanced against Congressional governments.

It is argued, that the Acts of Secession are all inoperative and void, and therefore the States continue precisely as before, with their local constitutions, laws, and institutions in the hands of traitors, but totally unchanged, and ready to be quickened into life by returning loy-

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alty. Such, I believe, is a candid statement of the pretension for State Rights against Congressional governments, which, it is argued, cannot be substituted for the State governments.

To prove that the Rebel States continue precisely as before, we are reminded that Andrew Johnson continued to occupy his seat in the Senate after Tennessee had adopted its Act of Secession and embarked in rebellion, and that his presence testified to the fact that rebel Tennessee was still a State of the Union. No such conclusion is authorized by this incident. There are two principles of Parliamentary Law long ago fixed: first, that the power once conferred by an election to Parliament is *irrevocable*, so that it is not affected by any subsequent change in the constituency; and, secondly, that a member, when once chosen, is *a member for the whole kingdom*, becoming thereby, according to the words of an early author, not merely knight, citizen, or burgess of the county, city, or borough which elected him, but knight, citizen, or burgess of England.[1] If these two principles are not entirely inapplicable to our political system, then the seat of Andrew Johnson was not in any respect affected by the subsequent madness of his State, nor can the legality of his seat be any argument for his State.

We are also reminded, that, during the last session of Congress, two Senators from Virginia represented that State in the Senate, and the argument is pressed that no such representation would be valid, if the State government of Virginia was vacated. This is a mistake. Two things are established by the presence of these Senators

[1] Whitelocke, Notes upon the King's Writ for Choosing Members of Parliament, ed. Morton, Ch. 96.

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in the National Senate: first, that the old State government of Virginia is extinct; and, secondly, that a new government has been set up in its place. It was my fortune to hear one of these Senators, while earnestly denouncing the idea that a State government could disappear. I could not but think that he strangely forgot the principle to which he owed his seat in the Senate, as men sometimes forget a benefactor.

It is true beyond question that the Acts of Secession are all inoperative and void against the Constitution of the United States. Though matured in successive conventions, sanctioned in various forms, and maintained ever since by bloody war, these Acts, no matter by what name they may be called, are all equally impotent to withdraw an acre of territory or a single inhabitant from the rightful jurisdiction of the nation. But while thus impotent against the United States, it does not follow that they were equally impotent in the work of self-destruction. Clearly, the Rebels, by utmost effort, could not impair the national jurisdiction; but it remains to be seen if their enmity did not act back with fatal rebound upon those very State Rights in behalf of which they commenced their treason.

It is sometimes said that the States themselves committed *suicide*, so that, as States, they ceased to exist, leaving their whole jurisdiction open to the occupation of the United States under the Constitution. This assumption is founded on the fact, that, whatever the existing governments in these States, they are in no respect constitutional; and since the State itself is known by the government with which its life is intertwined, it must cease to exist constitutionally when its

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government no longer exists constitutionally. It were better, perhaps, to avoid the whole question of life or death in the State, and content ourselves with inquiry into the condition of its government. It is not easy to say what constitutes that entity we call a State; nor is the discussion much advanced by any theory. To my mind it seems a topic fit for the old schoolmen or a modern debating society; and yet, considering the part it has already played, I shall be pardoned for a brief allusion to it.

There are well-known words which ask and answer the question, "What constitutes a *State?*" But the scholarly poet[1] was not thinking of a "State" of the American Union. Indeed, this term is various in use. Sometimes it stands for civil society itself. Sometimes it is the general name for a political community, not unlike "nation" or "country," — as when our fathers, in the Resolution of Independence which preceded the Declaration, spoke of "the *State* of Great Britain." Sometimes it stands for the government, — as when Louis the Fourteenth, at the height of his power, exclaimed, "The *State*, it is I," — or when Sir Christopher Hatton, in the famous farce of "The Critic," ejaculated, —

> "I cannot but surmise, — forgive, my friend,
> If the conjecture 's rash, — I cannot but
> Surmise *the State* some danger apprehends."[2]

Among us the term is most known as the technical name for one of the political societies composing our Union. When used in this restricted sense, it must not be confounded with the same term when used in

[1] Sir William Jones, Ode in Imitation of Alcæus: Works, Vol. X. p. 389.
[2] Act II Scene 2.

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a different and broader sense. But it is obvious that some persons attribute to the one something of the qualities which can belong only to the other. Nobody has suggested, I presume, that any "State" of our Union has, through rebellion, ceased to exist as a *civil society*, or even as a *political community*. It is only as a *State of the Union*, armed with State Rights, or at least as a *local government*, annually renewing itself, as the snake its skin, that it can be called in question. But it is vain to challenge for the technical "State," or for the annual government, that immortality which belongs to civil society. The one is an artificial body, the other is a natural body; and while the former, overwhelmed by insurrection or war, may change or die, the latter can change or die only with the extinction of the community itself, whatever its name or its form.

It is because of confusion in the use of this term that there has been so much confusion in the political controversies where it has been employed. But nowhere has this confusion led to greater absurdity than in the pretension recently made in the name of State Rights, — as if it were reasonable to claim for a technical "State" of the Union that immortality belonging to civil society.

From approved authorities it appears that a "State," even in a broader signification, may lose its life. Dr. Phillimore, in his recent work on International Law, says: "A State, like an individual, may die," and among the various ways, he says, "by its submission, and the donation of itself, as it were, to another country."[1] But in the case of our Rebel States there has been a plain submission and donation of themselves, *effective, at least,*

[1] Commentaries upon International Law, Vol. I. p. 147.

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to break the continuity of government, if not to destroy that immortality which is claimed. Nor can it make any difference, in breaking this continuity, that the submission and donation, constituting a species of attornment, are to enemies at home rather than to enemies abroad, — to Jefferson Davis rather than to Louis Napoleon. The thread is snapped in one case as much as in the other.

But *change of form* in the actual government may be equally effective. Cicero speaks of change so complete as "to leave no image of a State behind." This is precisely what has been done throughout the whole Rebel region: no image of a *constitutional* State is left behind. Another authority, Aristotle, whose words are always weighty, says, that, *the form of the State being changed, the State is no longer the same*, as the harmony is not the same when we modulate out of the Dorian mood into the Phrygian. But, if ever an unlucky people modulated out of one mood into another, it was our Rebels, when they undertook to modulate out of the harmonies of the Constitution into their bloody discords.

Without stopping further for these diversions, I content myself with the testimony of Edmund Burke, who, in a striking passage, which seems to have been written for us, portrays the extinction of a political community; but I quote his eloquent words rather for suggestion than authority.

"In a state of rude Nature there is no such thing as a people. A number of men in themselves have no collective capacity. The idea of a people is the idea of a corporation. It is wholly artificial, and made, like all other legal fictions, by common agreement. What the particular nature of that agreement was is collected from the form into which the

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particular society has been cast. Any other is not *their* covenant. *When men, therefore, break up the original compact or agreement which gives its corporate form and capacity to a state, they are no longer a people, they have no longer a corporate existence,* they have no longer a legal coactive force to bind within, nor a claim to be recognized abroad. They are a number of vague, loose individuals, and nothing more. With them all is to begin again. Alas! they little know how many a weary step is to be taken before they can form themselves into a mass which has a true politic personality."[1]

If that great master of eloquence could be heard, who can doubt that he would stamp our Rebel States as senseless communities who have sacrificed that corporate existence which makes them living, component members of our Union of States?

Again, it is sometimes said that the States, by flagrant treason, have *forfeited* their rights as States, so as to be civilly dead. It is a patent and indisputable fact, that this gigantic treason was inaugurated with all the forms of law known to the States; that it was carried forward not only by individuals, but also by States, so far as States can perpetrate treason; that the States pretended to withdraw bodily, in their corporate capacities; that the Rebellion, as it showed itself, was *by* States, as well as *in* States; that it was by the governments of States, as well as by the people of States; and that, to the common observer, the crime was consummated by the several corporations, as well as by the individuals of whom they were composed. From this fact, obvious to all, it

[1] Appeal from the New to the Old Whigs: Works (London, 1801), Vol. VI. pp. 210, 211.

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is argued, that, since, according to Blackstone, a traitor "hath abandoned his connections with society, and hath no longer any right to those advantages which before belonged to him purely as a member of the community,"[1] by the same principle the traitor State is no longer to be regarded as a member of the Union. But it is not necessary, on the present occasion, to insist on the application of any such principle to States.

Again, it is said that the States by their treason and rebellion, levying war upon the National Government, have *abdicated* their places in the Union; and here the argument is upheld by the historic example of England at the Revolution of 1688, when, on the flight of James and the abandonment of his kingly duties, the two Houses of Parliament voted, that the monarch, "having violated the fundamental laws, and having withdrawn himself out of this kingdom, *has abdicated the government*, and that the throne is thereby vacant."[2] But it is not necessary for us to rely on any allegation of abdication, applicable as it may be.

It only remains that we should see things as they are, and not seek to substitute theory for fact. On this important question I discard all theory, whether of State suicide, or State forfeiture, or State abdication, on the one side, or of State Rights, immortal and unimpeachable, on the other side. Such discussions are only endless mazes, in which a whole Senate may be lost. And discarding all theory, I discard also the jural question,

[1] Commentaries, Vol. IV. p. 882.

[2] Commons' Journals, Vol. X. p. 14, Jan. 28, 1688-9. Lords' Journals, Vol. XIV. p. 119, Feb. 6, 1688-9.

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whether, for instance, the Rebel States, while the Rebellion is flagrant, are *de jure* States of the Union, with all the rights of States. It is enough, that, for the time being, *and in the absence of a loyal government*, they can take no part and perform no function in the Union, *so that they cannot be recognized by the National Government.* The reason is plain. Since there are in these States no local functionaries bound by constitutional oaths, there are, in fact, no constitutional functionaries; and as the State Government is necessarily composed of such functionaries, there can be no State Government. Thus, for instance, in South Carolina, Pickens and his associates may call themselves Governor and Legislature, and in Virginia Letcher and his associates may call themselves Governor and Legislature; but we cannot recognize them as such. Therefore to all pretensions in behalf of State governments in the Rebel States I oppose the simple FACT, that, for the time being, no such governments exist. The broad spaces once occupied by those governments are now abandoned and vacated.

That loyal Senator, Andrew Johnson,— faithful among the faithless, the Abdiel of the South, — began his attempt to reorganize Tennessee by an address, as early as the 18th of March, 1862, in which he made use of these words: —

"I find most, if not all, of the offices, both State and Federal, *vacated, either by actual abandonment or by the action of the incumbents, in attempting to subordinate their functions* to a power in hostility to the fundamental law of the State and subversive of her national allegiance."[1]

In employing the word "vacated" Mr. Johnson hit

[1] Speeches, p. 455.

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upon the very term which, in the famous Resolution of 1688, was held most effective in dethroning King James. After declaring that he had abdicated the government, it was added, "that the throne is thereby *vacant*"; on which Macaulay happily remarks: —

"The word *abdication* conciliated politicians of a more timid school. . . . . To the real statesman the simple important clause was that *which declared the throne vacant;* and if that clause could be carried, he cared little by what preamble it might be introduced." [1]

The same simple principle is now in issue. It is enough that the Rebel States be declared *vacated*, as *in fact* they are, by all local government which we are bound to recognize: so that the way is open to the exercise of a rightful jurisdiction.

Here the question occurs, How shall this rightful jurisdiction be established in the vacated State? Some there are, so impassioned for State Rights, and so anxious for forms, even at the expense of substance, that they insist upon the instant restoration of the old State governments in all their parts, through the agency of loyal citizens, who, meanwhile, must be protected in this work of restoration. But, assuming that all this is practicable, as it clearly is not, it attributes to the loyal citizens of a Rebel State, however few in numbers, — it may be an insignificant minority, — a power clearly inconsistent with the received principle of popular government, that the majority must rule. The thirteen voters of Old Sarum were allowed to return two members of Parliament, because this place, — once a Roman fort,

[1] History of England (3d edit., London, 1849), Vol. II. p. 630.

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and afterwards a sheep-walk, — many generations before, at the early constitution of the House of Commons, had been entitled to this representation; but the argument for State Rights assumes that all these rights may be lodged in voters as few in number as ever controlled a rotten borough of England.

Pray, admitting that an insignificant minority is to organize the new government, how shall it be done, and by whom shall it be set in motion? In putting these questions, I open the difficulties. As the original government has ceased to exist, and there are none who can be its legal successors so as to administer the requisite oaths, it is not easy to see how the new government can be set in motion, without resort to some revolutionary proceeding, instituted either by the citizens or by the military power, — unless Congress, in the exercise of its plenary authority, should undertake to organize the new jurisdiction.

But every revolutionary proceeding is to be avoided. It is within the recollection of all familiar with our history, that our fathers, while regulating the separation of the Colonies from the parent country, were careful that all should be done according to forms of law, so that *the thread of legality* should continue unbroken. To this end the Continental Congress interfered by supervising direction. But the Tory argument denied the power of Congress then as earnestly as now. Mr. Duane, of the Continental Congress, made himself its mouth-piece.

"*Congress ought not to determine a point of this sort, about instituting government.* What is it to Congress how justice is administered? You have no right to pass the resolution, any more than Parliament has. How does it ap-

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pear that no favorable answer is likely to be given to our petitions?"[1]

In spite of this argument, the Congress of that day undertook, by formal resolutions, to indicate the process by which the new governments should be constituted.[2]

If we seek for the principle which entered into this proceeding of the Continental Congress, we find it in the idea that nothing can be left to illegal or informal action, but that all must be done according to rules of constitution and law previously ordained. Perhaps this principle has never been more distinctly or powerfully enunciated than by Mr. Webster, in his speech against the Dorr Constitution in Rhode Island. According to him, this principle is a fundamental part of what he calls our American system, under which the right of suffrage is prescribed by *previous law*, including its qualifications, the time and place of its exercise, and the manner of its exercise; and then, again, the results are certified to the central power by some certain rule, *by some known public officers*, in some clear and definite form, thus accomplishing two things: first, that every man entitled to vote may vote; secondly, that his vote may be sent forward and counted, so that practically he may exercise his part of sovereignty in common with his fellow-citizens. Such, according to Mr. Webster, are minute forms which must be followed, if we would impart to the result the crowning character of law. And here are other positive words from him on this important point.

"We are not to take the will of the people from public

[1] Notes of Debates in the Continental Congress in 1775 and 1776: Works of John Adams, Vol. II. pp. 489, 490.

[2] Autobiography of John Adams: Works, Vol. III. pp. 17, 18, 44, 46.

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meetings, nor from tumultuous assemblies, by which the timid are terrified, the prudent are alarmed, and by which society is disturbed. These are not American modes of signifying the will of the people, and they never were."

"Is it not obvious enough, that men cannot get together and count themselves, and say they are so many hundreds and so many thousands, and judge of their own qualifications, and call themselves the people, and set up a government? *Why, another set of men, forty miles off, on the same day, with the same propriety, with as good qualifications, and in as large numbers, may meet and set up another government.*"

"When, in the course of events, it becomes necessary to ascertain the will of the people on a new exigency or a new state of things or of opinion, *the legislative power provides for that ascertainment by an ordinary act of legislation.*"

"What do I contend for? I say that the will of the people must prevail, when it is ascertained; but there must be *some legal and authentic mode of ascertaining that will*, and then the people may make what government they please."

"All that is necessary here is, that the will of the people should be ascertained by some regular rule of proceeding, *prescribed by previous law.*"

"But the law and the Constitution, the whole system of American institutions, do not contemplate a case in which a resort will be necessary to proceedings *aliunde*, or *outside of the law and the Constitution*, for the purpose of amending the frame of government."[1]

Happily, we are not constrained to any such revolutionary proceeding. The new governments can all be organized by Congress, which is the natural guardian of the people, without any immediate government, and within the jurisdiction of the National Constitution.

[1] The Rhode Island Government: Works, Vol. VI. pp. 225–231.

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Indeed, with the State governments already *vacated* by Rebellion, the Constitution becomes, for the time, the supreme and only law, binding alike on President and Congress, so that neither can establish any law or institution incompatible with it; and the whole Rebel region, deprived of all local government, lapses under the exclusive jurisdiction of Congress, precisely as any other territory, — or, in other words, the negation of the local government leaves the whole vast region without any other government than Congress, unless the President should undertake to govern it by military power. Startling as this proposition may seem, especially to all who believe that there is a "divinity doth hedge" a State hardly less than a king, it will appear, on careful consideration, to be as well founded in the Constitution as it is simple and natural, while it affords easy and constitutional solution to all present embarrassments.

I have no theory to maintain, but only the truth; and in presenting this argument for Congressional government I simply follow teachings which I cannot control. The wisdom of Socrates, in the words of Plato, has aptly described these teachings, when he says, —

"These things, as I affirm, are held and bound (though it is somewhat rude to say so) in reasons of iron and adamant, as would really appear to be the case, — so that, unless you, or some one stronger than you, can break them, it is not possible that any one who says otherwise than as I now say can speak correctly; for my statement is always the same, — that I know not how these things are, but that of all the persons with whom I have ever conversed, as now with you, no one who says otherwise can avoid being ridiculous."[1]

Show me that I am wrong, that this conclusion is not

[1] Gorgias, tr. Cary, c. 64.

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founded in the Constitution, and is not sustained by reason, and I shall at once renounce it; for, in the present condition of affairs, there can be no pride of opinion which must not fall at once before the sacred demands of country. Not as partisan, not as advocate, do I make this appeal, but simply as citizen, seeking, in all sincerity, to offer my contribution to the establishment of that policy by which Union and Peace may be restored.

Looking at the origin of this power in Congress, we find that it comes from three distinct fountains, any one of which is ample to supply it. Three fountains, generous and hospitable, are found in the Constitution ready for this occasion.

First. From the necessity of the case, *ex necessitate rei*, Congress must have jurisdiction over every portion of the United States *where there is no other government;* and since in the present case there is no other government, the whole region falls within the jurisdiction of Congress. This jurisdiction is incident, if you please, to that guardianship and eminent domain belonging to the United States over all its territory and the people thereof, and springing into activity when the local government ceases. It can be questioned only in the name of the local government; but since this government has disappeared in the Rebel States, the jurisdiction of Congress is uninterrupted there. The whole broad Rebel region is *tabula rasa*, or "a clean slate," where Congress, under the Constitution of the United States, may write the laws. In adopting this principle, I follow the authority of the Supreme Court of the United States in determining the jurisdiction of Congress over the

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Territories. Here are the words of Chief-Justice Marshall: —

"Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, *may result necessarily from the facts that it is not within the jurisdiction of any particular State*, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory."[1]

If the right to govern may be the inevitable consequence of the right to acquire territory, surely, and by much stronger reason, this right must be the inevitable consequence of the sovereignty of the United States, wherever there is no local government.

Secondly. The jurisdiction may also be derived from the *Rights of War*, which surely are not less abundant for Congress than for President. If the President, disregarding the pretension of State Rights, can appoint military governors within the Rebel States to serve a temporary purpose, who can doubt that Congress can exercise a similar jurisdiction? That of the President is derived from the war powers; but these are not sealed to Congress. If it be asked, where in the Constitution such powers are bestowed upon Congress, I reply, that they are found precisely where the President now finds his powers. But it is clear that the powers to "declare war," to "suppress insurrections," and to "support armies" are all ample for this purpose. It is Congress that conquers, and the same authority that conquers must govern. Nor is this authority derived from any strained construction; it springs from the very heart of

[1] American Insurance Company *v.* Canter, 1 Peters, S. C. R., p. 542.

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the Constitution. It is among those powers, latent in peace, which war and insurrection call into being, but as intrinsically constitutional as any other power.

Even if not conceded to the President, these powers must be conceded to Congress. Would you know their extent? They are found in the authoritative texts of Public Law, — in the works of Grotius, Vattel, and Wheaton. They are the powers conceded by civilized society to nations at war, known as Rights of War, — at once multitudinous and minute, vast and various. It would be strange, if Congress could organize armies and navies to conquer, and could not also organize governments to protect.

De Tocqueville, who saw our institutions with so keen an eye, remarked, that, since, in spite of all political fictions, the preponderating power resided in the States and not in the nation, a civil war here would be "nothing but foreign war in disguise."[1] Of course the natural consequence would be to give the nation, in such a civil war, all the rights it would have in a foreign war. And this conclusion from the observation of the ingenious publicist has been practically adopted by the Supreme Court of the United States, in those recent cases where this tribunal, after most learned argument, followed by most careful consideration, adjudged, that, since the Act of Congress of July 13, 1861, the nation has been waging "a *territorial* civil war," in which all property afloat, belonging to a resident of the *belligerent territory*, is liable to capture and condemnation as lawful prize. But, surely, if the nation may stamp upon all residents in this *belligerent territory* the character of

[1] Democracy in America (ed. Bowen, Cambridge, 1863), Vol. II. ch. 26, p. 358, note.

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foreign enemies, so as to subject ships and cargoes to the penalties of confiscation, it may perform the milder service of making all needful rules and regulations for the government of this territory under the Constitution, so long as requisite for the sake of peace and order; and since the object of war is "indemnity for the past and security for the future," it may do everything necessary to make these effectual. But it will not be enough to crush the Rebellion; its terrible root must be exterminated, so that it may no more flourish in blood.

Thirdly. There is another source for this jurisdiction common alike to Congress and the President. It is found in the constitutional provision, that "the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion." Here, be it observed, are words of guaranty and an obligation of protection. In the original concession to the United States of this twofold power there was open recognition of the ultimate responsibility and duty of the National Government, *conferring jurisdiction above all pretended State Rights;* and now the occasion has come for the exercise of this twofold power thus solemnly conceded. The words of twofold power and corresponding obligation are plain, and beyond question. If there be any ambiguity, it is only in what constitutes a republican form of government. But for the present this question does not arise. It is enough that a wicked rebellion has undertaken to detach certain States from the Union, and to take them beyond its protection and sovereignty, with the menace of seeking foreign alliance and support, even at the cost of every distinctive institution. It is well known that *Mr. Madison anticipated this precise danger from Slavery,*

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and upheld this precise grant of power in order to counteract the danger. His words, which will be found in a yet unpublished document produced by Mr. Collamer in the Senate, seem prophetic.

Among the defects he remarked in the old Confederation was what he called "want of guaranty to the States of their constitutions and laws *against internal violence.*" In showing why this guaranty was needed, he says, that, "according to republican theory, right and power, being both vested in the majority, are held to be synonymous; according to fact and experience, a minority may, in an appeal to force, be an overmatch for the majority"; and he then adds, in words of wonderful prescience, "*Where Slavery exists, the republican theory becomes still more fallacious.*"[1] This was written in April, 1787, before the meeting of the Convention that formed the National Constitution. Here is the origin of the very clause in question. The danger which this statesman foresaw is now upon us. When a State fails to maintain a republican government, *with officers sworn according to requirement of the Constitution,* it ceases to be a constitutional State. The very case contemplated by the Constitution has arrived, and the National Government is invested with plenary powers, whether of peace or war. There is nothing in the storehouse of peace, and there is nothing in the arsenal of war, it may not employ in the maintenance of this solemn guaranty, and in the extension of that protection against invasion to which it is pledged. But this extraordinary power carries with it corresponding duty. Whatever

[1] Congressional Globe, 37th Cong. 2d Sess., p. 1808, April 24, 1862. — The paper here quoted, entitled "Notes on the Confederacy," has since appeared in a collection, in four volumes, of Letters and other Writings of Madison, published in 1865 by order of Congress. See Vol. I. pp. 320 – 328.

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shows itself dangerous to a republican form of government must be removed without delay or hesitation; and if the evil be Slavery, our action will be bolder when it is known that the danger was foreseen.

In reviewing these three sources of power, I know not which is most complete. Either is ample alone; but the three together are three times ample. Thus out of this triple fountain, or, if you please, by this triple cord, do I educe the power of Congress over the vacated States.

There are yet other words of the Constitution which cannot be forgotten. "New States may be admitted by the Congress into this Union." Assuming that the Rebel States are no longer *de facto* States of this Union, but that the territory occupied by them is within the jurisdiction of Congress, then these words become completely applicable. It is for Congress, in such way as it shall think best, to regulate their return to the Union, whether in time or manner. No special form is prescribed. But the vital act must proceed from Congress. Here again is another testimony to that Congressional power, which, under the Constitution, will restore the Republic.

Against this power I have heard nothing which can be called argument. There are objections, originating chiefly in the baneful pretension of State Rights; but these objections are animated by prejudice rather than reason. Assuming the impeccability of a State, and openly declaring that States, like kings, can do no wrong, while, like kings, they wear "the round and top of sovereignty," politicians treat them with most mis-

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taken forbearance and tenderness, as if these Rebel corporations could be dandled into loyalty. At every suggestion of rigor, State Rights are invoked; and we are vehemently told not to destroy the States, when all that Congress proposes is simply to recognize the actual condition of the States, and undertake their temporary government by providing for the condition of political syncope into which they have fallen, and during this interval substitute its own constitutional powers for the unconstitutional powers of the Rebellion. Congress will blot no star from the flag, nor will it obliterate any State liabilities; but it will seek, according to its duty, in the best way, to maintain the great and real sovereignty of the Union, by upholding the flag unsullied, and by enforcing everywhere within its jurisdiction the supreme law of the Constitution.

At the close of an argument already too long drawn out, I shall not stop to array the considerations of reason and expediency in behalf of this jurisdiction; nor shall I dwell on the inevitable influence it must exercise over Slavery, which is the motive of the Rebellion. To my mind nothing can be clearer, as a proposition of Constitutional Law, than that everywhere within the exclusive jurisdiction of the National Government Slavery is impossible. The argument is as brief as it is unanswerable. Slavery is so odious that it can exist only by virtue of positive law, plain and unequivocal; but no such words can be found in the Constitution; therefore Slavery is impossible within the exclusive jurisdiction of the National Government. For many years I have had this conviction, and have constantly maintained it. I am glad to believe that it is implied, if not expressed, in the Chicago Platform. Mr. Chase,

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among our public men, is known to accept it sincerely. Thus Slavery in the Territories is unconstitutional; but if the Rebel territory falls under the exclusive jurisdiction of the National Government, then Slavery becomes impossible there. In a legal and constitutional sense, it must die at once. The air is too pure for a slave. I cannot doubt that this great triumph has been already won. The moment that the States fell, Slavery fell also; so that, even without any proclamation of the President, Slavery ceased to have legal and constitutional existence in every Rebel State.

Even if we hesitate to accept this important conclusion, which treats Slavery within the Rebel States as already dead in law and Constitution, it cannot be doubted that by the extension of Congressional jurisdiction, as now proposed, many difficulties will be removed. Holding every acre of soil and every inhabitant within its jurisdiction, Congress can easily do whatever is needful within Rebel limits to assure freedom and save society. The soil may be divided among patriot soldiers, poor whites, and freedmen; but above all things the inhabitants may be saved from harm. Those citizens in the Rebel States who throughout the darkness of the Rebellion have kept their faith will be protected, and the freedmen rescued from hands that threaten to cast them back into Slavery.

This jurisdiction, which is so completely practical, is grandly conservative also. Had it been early recognized that Slavery depends exclusively upon the local government, and falls with that government, who can doubt that every Rebel movement would have been checked? Tennessee and Virginia would never have stirred; Maryland and Kentucky would never have thought of

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stirring; there would have been no talk of neutrality between the Constitution and the Rebellion; and every Border State would have been fixed in loyalty. Let it be established in advance, as an inseparable incident to every Act of Secession, that it is not only impotent against the National Constitution, but that, on its occurrence, both soil and inhabitants lapse beneath the jurisdiction of Congress, and no State will ever again pretend to secede. The word "territory," according to old and quaint etymology, is said to come from *terreo*, to terrify, because it was a bulwark against the enemy: *Territorium est quidquid hostis terrendi causâ constitutum est*,[1] — "A territory is anything established for the purpose of terrifying an enemy"; but I know of no way in which our Rebel enemy would have been more terrified than by being told that his course would inevitably precipitate his State into a territorial condition. Let this principle be adopted, and it will contribute essentially to that consolidation of the Union which was so near the heart of Washington.

The necessity of this principle is apparent as a restraint upon the lawless vindictiveness and inhumanity of the Rebel States, whether against Union men or against freedmen. Union men in Virginia already tremble at the thought of being delivered over to a State government wielded by original Rebels pretending to be patriots; but the freedmen, who have only recently gained their birthright, are justified in keener anxiety, lest it should be lost as soon as won. Mr. Saulsbury, a Senator from Delaware, with most instructive frankness,

[1] Frontinus, De Controversiis, ed. Blume, etc., (Berlin, 1848,) Lib. I. p. 20. Grotius says the same thing: "Et hæc non minus probabilis videtur nominis territorii origo *a terrendis hostibus*." — *De Jure Belli ac Pacis*, Lib. III. cap. vi. § 4, 2.

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has announced in public debate what the restored State governments will do. Assuming that the local governments will be preserved, he predicts that in 1870 there will be more slaves in the United States than there were in 1860, and then unfolds the reason as follows, all of which will be found in the "Congressional Globe."

"By your Acts you attempt to free the slaves. You will not have them among you. You leave them where they are. Then what is to be the result? I presume that local State governments will be preserved. If they are, if the people have a right to make their own laws and to govern themselves, they will not only reënslave every person that you attempt to set free, but they will reënslave the whole race."[1]

Nor has the horrid menace of reënslavement proceeded from the Senator from Delaware alone. It has been uttered even by Mr. Willey, the mild Senator from Virginia, speaking in the name of State Rights. Newspapers have taken up and repeated the revolting strain. That is to say, no matter what may be done for Emancipation, whether by proclamation of the President, or by Congress even, the State, resuming its place in the Union, will, in the exercise of its sovereign power, reenslave every colored person within its jurisdiction; and this is the menace from Delaware, and even from regenerated Western Virginia! I am obliged to Senators for their frankness. If additional motive were needed for the urgency with which I assert the power of Congress, it would be found in the pretensions thus savagely proclaimed. In the name of Heaven, let us spare no effort to save the country from such shame, and an oppressed people from the additional outrage.

[1] Speech on the Confiscation Bill, May 2, 1862: Congressional Globe, 37th Cong. 2d Sess., p. 1923.

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As I quote Mr. Willey, I desire his precise words should be understood, that the country may see the necessity of Congressional action. In opposing Emancipation in the District of Columbia, he depicted the unhappy fate of the freedman.

"Suppose they are emancipated, what then? Are they freemen in fact? Will they have the rights of freemen? Sir, such an idea is utterly fallacious. It will practically amount to nothing. You cannot enact the slave into a freeman by bill in Congress. A charter of his liberty may be engrossed, enrolled, and passed into a law, with all the formalities of legislation, *and still he must remain virtually a slave.*" [1]

Pursuing this same strain in a later debate on the Confiscation Bill, which provided for Emancipation in certain cases, the Senator said: —

"Sir, what will be the necessary and inevitable result of this policy, if it be carried into effect? It will be that Virginia, by this increase of the free negro population under the operation of this bill, will be driven not only to reënslave those who may be manumitted under the operation of the present bill, but also to reënslave the sixty thousand free negroes already there. . . . . Sir, the evil will be unendurable, and the result will be the reënslavement of the slaves thus manumitted, as well as those already free in our State." [2]

I quote these words with extreme pain. Their author is not known as a fanatic of Slavery. Therefore do they reveal the terrible peril against which Congress must provide.

[1] Congressional Globe, 37th Cong. 2d Sess., March 20, 1862, p. 1301.
[2] Ibid., April 10, 1862, pp. 1604, 1605.

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"Once free, always free." This is a rule of law and an instinct of humanity. It is a self-evident axiom, which only tyrants and slave-traders have denied. The brutal pretension thus flamingly advanced already puts us all on our guard. There must be no chance or loop-hole for such intolerable, Heaven-defying iniquity. Alas! there have been crimes in human history, but I know of none blacker than this. There have been acts of baseness, but I know of none more utterly vile. Against the possibility of such a sacrifice we must take a bond which cannot be set aside; and this can be found only in the powers of Congress.

Congress has already done much. Besides its noble Act of Emancipation, it has provided that every person guilty of treason, or of inciting or assisting the Rebellion, shall be "disqualified to hold any office under the United States"[1]; and by another Act it has provided, that every person, elected or appointed to any office of honor or profit under the Government of the United States, shall, before entering upon its duties, *take and subscribe an oath or affirmation* that he has "never voluntarily borne arms against the United States since he has been a citizen thereof," or "voluntarily given aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto," or "sought, or accepted, or attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States."[2] This oath is a bar against return to *national office* of any taking part with the Rebels. It shuts out in advance the whole criminal

[1] Acts of 37th Cong. 2d Sess., Ch. 190, sec. 8: Statutes at Large, Vol. XII. p. 590.

[2] Ibid., Ch. 128: Statutes at Large, Vol. XII. p. 502.

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company. But these same persons, rejected by the National Government, are left free to hold office in the States; and here is another motive to further action by Congress. The oath is well as far as it goes; more must be done in the same spirit.

But enough. The case is clear. Behold the Rebel States in arms against that paternal government to which, as the supreme condition of constitutional existence, they owe duty and love; and behold all legitimate powers, executive, legislative, and judicial, in these States, abandoned and vacated. *It only remains that Congress should enter and assume the proper jurisdiction.* If we are not ready to exclaim with Burke, speaking of revolutionary France, "It is but an empty space on the political map," we may at least adopt the response hurled back by Mirabeau, that this empty space is a volcano red with flames and overflowing with lava-floods. But whether we deal with it as "empty space" or as "volcano," the jurisdiction, civil and military, centres in Congress, to be employed for the happiness, welfare, and renown of the American people, — changing Slavery into Freedom, and present Chaos into a Cosmos of perpetual beauty and power.

END OF VOLUME VII.

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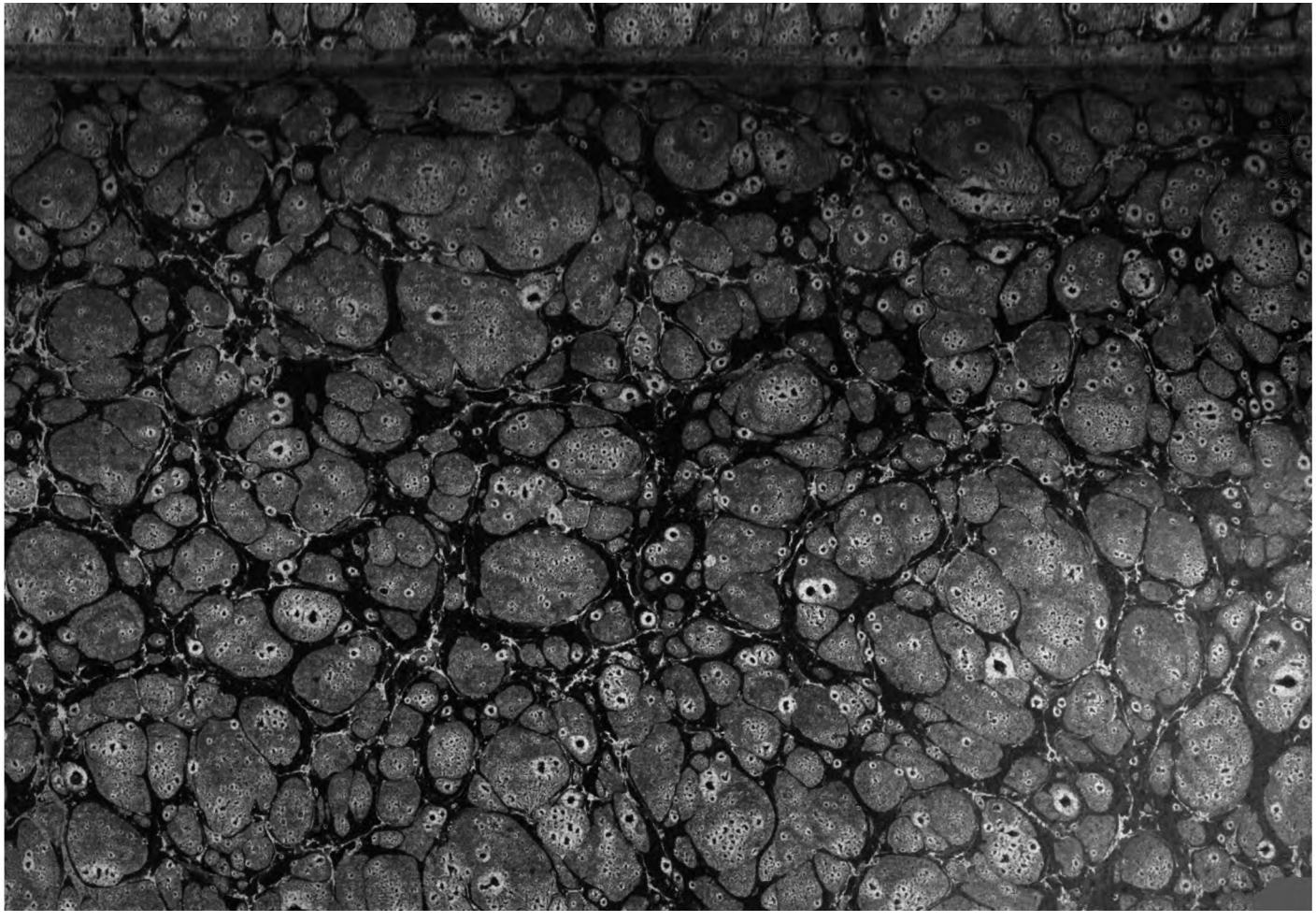

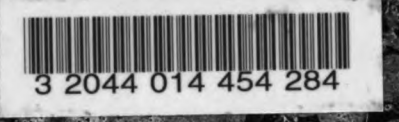

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